

(2021) 02 SHI CK 0248

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 5317, 5225, 5226, 5227, 5230, 5234, 5253, 5254, 5255 5314, 5315, 5316 Of 2020

Dr. Vikram Verma And Others

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 22-02-2021

Acts Referred:

Citation : (2021) 02 SHI CK 0248

Hon'ble Judges : Sureshwar Thakur, J;Chander Bhusan Barowalia, J

Bench : Division Bench

Advocate : Dr. A.E. Chelliah, Sanjeev Bhushan, Devender K. Sharma, Rajesh Kumar Sharma, K.D. Shreedhar, Shreya Chauhan

Final Decision : Disposed Of

Judgement

Sureshwar Thakur, J

1. Since all these writ petitions contain similar controversies, and, also common questions of law, thereupon, all these writ petitions are amenable for a

common verdict, becoming recorded thereon. Since, as aforesaid, there occur(s) the afore commonalities, in all the writ petitions, thereupon the

factual matrix prevailing, in, CWP No. 5317 of 2020, shall alone become alluded to, for, thereons an adjudication becoming meted.

2. In CWP No. 5317 of 2020, the writ petitioner claims the making of the hereinafter "mandamus", upon, the respondents:

1. Issue a writ, order or direction in nature of Certiorari quashing the impugned Advertisement no. 03/2020 dated 08.10.2020 issued by the

Registrar, National Institute of Technology, Hamirpur (H.P.) respondent No.4.

2. Issue a writ, order or direction in nature of Mandamus commanding the respondents concerned to initiate the process of selection through direct

recruitment holding interview of the petitioner for the post of Assistant Professor Grade-I under new Nomenclature (earlier PB-3, AGP 8000) from their present working as Assistant professor Grade-II {(earlier PB-3, AGP 6000 (on contract))} having become eligible for the same fulfilling the required essential qualification of having teaching experience of three years after Ph.D. as per the newly adopted Amended Recruitment and Promotion Rules (R.R.) 2017; through its Gazette notification dated 21. 7.2017 and its incorporation in the First Statue 2009 through coming of Amended First Statue known as 'First Statutes of the National Institutes of Technology (Amendment) Statutes, 2017' and after having dropped the 5 year contractual period criteria under the new Recruitment Rules (RR-2017).

3. Issue an writ, order or direction in the nature of Mandamus commanding the respondents concerned to further initiate the process of selection

through direct recruitment holding interview of petitioner for the post of Assistant Professor Grade-I under new Nomenclature (earlier PB-3, AGP

8000) from their present working as Assistant Professor Grade-II {(earlier PB-3, AGP 7000 (on contract)} having fulfilled the requirement of

essential qualification of having teaching experience of three years after Ph.D. after coming of new R.R. 2017 and its adoption in the Statutes 2009,

after having dropped the 5 year contractual period criteria under the new Recruitment Rules (RR-2017).

4. Issue a writ, order or direction in the nature of Mandamus commanding the respondents concerned not to dispense with the services of the

petitioners (after dropping of 5 year contract period criteria under new RR-2017) now working under newly assigned nomenclature as Assistant

Professor Grade-II (pay Level- 10) as per the notification dated 30.11.2018 w.e.f 27.10.2017 till the petitioners are moved through the next grade pay

as Assistant Professor (AGP 8000).??

3. For testing the validity of afore espousal made before this Court, it becomes imperative to allude to Annexure P-2, apposite clause- 3 whereof

becomes extracted hereinafter:

??3. Your contract shall be for a maximum period of 5 years with renewal after every one year subject to satisfactory performance. Your contract

shall be liable to be terminated prematurely in case of dereliction of duties or

unsatisfactory performance or any misconduct.â??

4. The contractual engagement of the writ petitioners against the advertised posts of Assistant Professors, has therein been stipulated to extend upto a period of five years, however, renewal thereof is to be made after every one year and subject to satisfactory performance. However, the respondents concerned, do not contest, the efficiency or satisfactory performance of the writ petitioners, in theirs, discharging the functions appertaining to their contractual assignments, as, Assistant Professors, nor, the respondents, contest the factum, of the writ petitioners, during the tenure of their services, in the afore capacity under them, each of them not-derelecting in the discharge of their duties or theirs not-misconducting themselves.

5. The respondents concerned proceeded to issue, the, impugned advertisement notice, wherethrough, invitations became invited from the eligible aspirants concerned vis-Ã -vis the post(s) of Assistant Professors, and whereagainst, the writ petitioners became, earlier appointed, for theirs being filled up, and also therethrough, there is a purported shortening or curtailing of the period of five years, vis-Ã -vis, the contractual assignment(s), as Assistant Professors, of, the petitioners, and, as became bestowed upon each of them in pursuance to Annexure P- 2.

6. The writ petitioners contend, that the afore purported shortening or curtailment of a period of five years of their contractual assignments, as Assistant Professors, despite theirs, uncontrovertedly satisfactorily discharging the duties, appertaining to their contractual assignments, and despite theirs not misconducting themselves, infringes the mandate of clause 3 of Annexure P-2, and also, (i) thereupon the mandate of Annexure P-3, hence making contemplations, for their upward movement to the higher pay band(s), contemplation whereof is in tandem with clause-2 of Annexure P-2, wherein(s), on completion of three years, in a contractual capacity, by the petitioners, as, Assistant Professors, it becomes enshrined qua theirs becoming entitled to shift or migrate, to a higher pay band, than the one where to which, before expiry of three years, they were initially entitled/placed. However, the other migration, as spelt, in Annexure-3 is not automatic, but is subject to each of the aspirants concerned, after issuance of the apposite advertisement notice, and, theirs making applications

their against, rather their successfully facing the validly constituted selection committee.

7. Be that as it may, the respondents through issuing the impugned advertisement notice No. 03/2020, as, made on 8.10.2020, strive to negate the afore

entitlements of the writ petitioners, and, the afore negations of the afore entitlements, vis-à-vis the writ petitioners, become(s) anchored, upon the

coming into force, and, adoptions of Annexure P- 8, hence made on 29.5.2017, (i) wherein, the afore five years' tenure of contractual

assignments, as Assistant Professors, as, underlined in the afore extracted specific clause No. 3, of, Annexure P-2 became dispensed with, (ii) and the

afore exclusion of clause No. 3, in, Annexure P-8, as occurred on 29.5.2017, becomes purportedly leveraged, hence, by the respondents, to apart from

terminating the contract of employment, as Assistant Professors, hence of the writ petitioners, there is also as aforesaid, a, striving of the

respondents concerned, to deprive each of them, of their(s) afore articulated entitlement(s), qua their moving upwards or migrating to the higher pay

band, than the pay band, where to which, they were entitled to prior to their completing three years, of the apposite contractual assignment(s) under,

the respondents.

8. Mr. K.D. Shreedhar, the learned Senior Counsel, appearing for the respondents concerned, has made a fervent attempt, to validate the issuance of,

the, impugned advertisement notice, and, also has made a valiant effort to validate the afore concomitant effects, as ensue therefrom. His afore

efforts are made dependent, upon, a verdict made, by a Coordinate Bench of this court in CWP No. 2369 of 2020, titled Dr. Rajesh Kumar Sharma

and Ors v. Union of India and Ors, on 18.9.2020, wherein vis-à-vis an alike hereat res-controversia, the reliefs similar to the one as become

canvassed in the extant petition, rather became declined to the petitioners therein.

9. This Court, has had, an opportunity to incisively marshal the judicial wisdom embodied therein, and, for the reasons to be assigned hereinafter, this

Court does not deem it fit and appropriate, to make any reliance thereon, for making any alike therewith denial, of, the espoused reliefs, to the

petitioners herein, (i) the Coordinate Bench of this Court, though aptly refrained,

from interfering with the fixity of the tenure, of, contractual assignments of the writ petitioners, as Assistant Professors, and, the afore validation of limiting(s) or curtailing(s), of, the tenure of the contractual assignments of the petitioners therein, who are alike the petitioners herein, rather flowed from the coordinate Bench, in making judgment (supra) relying upon the common to both the afore writ petition, and, to the extant writ petitioners. (i) Hence the issuance of fresh recruitment rules, in replacement to the earlier thereto Rules of 2015, (ii) wherein the earlier contemplations vis-à-vis the longevity of the period, of, contractual assignments of Assistant Professors, rather upto a period of five years became dispensed with, and, became substituted by a tenure of three years, and, (iii) wherefrom, a conclusion became drawn, that the afore replacement, as occurred in the year, 2017, bestowing the completest empowerment upon the respondents concerned to limit or curtail the period of their contractual assignment(s), (iv) and also, an obvious and inevitable tacit/implied conclusion, became drawn, that the purported upward migration, of the writ petitioners, to a higher pay band, than the one, they were receiving prior to the completion of three years, of, contractual assignment(s), as Assistant Professors, under the respondents per-se hence, not carrying any enlivened legal force, imperatively upon/after the coming into force of the new Recruitment Rules of 2017. In the Coordinate Bench of this Court, making the afore tacit conclusion, it appears to overlook the legal effects, of, clause 16 of Annexure P-2, clause whereof stands extracted, legal ramifications whereof, shall become alluded to hereinafter??

â??16. You shall be governed under the NIT Act-2007/Statutes/Rules/Instructions of NIT Hamirpur, framed from time to time relating to Service conditions, Rules of Discipline and any other matters/conditions not specified in the appointment letter.â??

10. A reading of the afore extracted clause, as embodied in Annexure P-2, does bring visible upsurgings, that the service conditions, of the writ petitioners, became amenable for governance(s) or regulation(s), through rules/instructions appertaining to NIT, Hamirpur, H.P., as become framed from time to time. The further striking legal effect thereof, is, that the subsequent to 16.11.2015, any amendments, as made, in the apposite R&P Rules, becoming therein, hence, mandated to govern the service conditions of

the writ petitioners, (i) besides the afore also, became contractually accepted, by the respondents concerned, to hold legal clout and sway, specifically vis-à-vis the writ petitioners, whereupon, the latter or subsequent to the year, 2015, brought into force, hence the apposite amendments vis-à-vis the R&P rules, and, wherethrough, hence, substitution occurred of the earlier tenure of five years of contractual assignment, to, three years, does assume an aura of validity. However, it appears that the respondents concerned, omitted to galvanize or omitted to put into motion, the afore empowerment, as evident from theirs, rather, permitting the writ petitioners to continue to serve in the apposite contractual capacity, under them, hence even, beyond the period of three years. Even though, the afore constitute waivers of apposite powers vested in the respondents, yet may not, subject to the hereinafter drawn inferences, weaponise, any argument in the petitioners, to contend that hence, the afore apposite substitution becomes nugatory, (ii) nor can they, subject to the hereinafter drawn inferences, become weaponised, to contend, that the respondents may hence, upon expiry of the afore deemed extension, of their contractual assignments, inasmuch as, even after, the, ending of five years, since theirs becoming initially engaged, on a contractual basis, as Assistant Professors, rather become disabled to terminate their contractual assignments.

11. Be that as it may, and de hors, the afore, yet since a complete concurrence evidently upsurges inter- se the mandate borne in the notification of 15.1.2015, and clause No.2 of Annexure P-2, as, made on 23.8.2013, wherein, candid prescriptions are cast, rather bestowing entitlement(s) upon them, to, after theirs completing three years, in the afore capacity, hence theirs ably striving to seek migrations or upward movements to a higher pay band than earlier thereto, they were receiving, thereupon the afore apposite upward movements cannot become rendered unvindicable, or unworkable, (i) rather the afore entitlement(s), arising from three years of rendition of service, on a contractual basis, by the writ petitioners, does obviously, foster an inference, that for ensuring its efficacy, rather being not undone, upon, expiry of three yearsâ?? tenure, of, service, (ii) whereupon, after expiry, of, tenure(s), of, three yearsâ?? of contractual service, the respondents concerned become disabled to terminate the contractual assignment(s) of the petitioners, conspicuously, vis-a-vis, those contractual appointees, who complete

three yearsâ?? of contractual service, (iii) as thereupon, the afore apposite vindicable migrations would continue to hold force, or, would continue to govern, and, regulate the service conditions of the writ petitioners, (iv) besides, obviously, the afore entitlement becomes unamenable to be put at naught or becoming stripped of vigor, (v) unless as aforestated in the rules of 2017, the afore earlier contemplated apposite upward movement or migrations became evidently established, to, become deleted or struck off. Consequently, the negations, vis-À-vis, the afore entitlements, to the writ petitioners, by the respondents, through, the latter issuing the impugned advertisement notice, does palpably, infringe clause 16 of Annexure P-2, (vi) and, thereupon, a mandamus becomes enjoined to be pronounced, upon them to, forthwith constitute a selection committee, and, to preceding therewith, hence, issue an advertisement notice, for ensuring the participation(s) therein, of the writ petitioners, if each of them has nowat completed three yearsâ?? of contractual service, rather for determining the suitabilities of the writ petitioners, to seek, the benefits of clause-16 of Annexure P-2, as, made on 23.8.2013, and, the concurrent therewith, notification issued on 15.1.2014, whereto which, Annexure P- 3, is designated, unless as afore stated in the rules of 2017, their replacement or deletion, has therein(s) been made.

12. Lastly, the learned Senior Counsel, appearing for the respondents herein, has drawn the attention of this court to the verdict of the Allahabad High Court, existing as Annexure P-5, and, submits that since the afore verdict has attained finality, given the challenge as became carried theiragainst before the Honâ??ble Apex Court, rather becoming, as unfolded by Annexure P-6, hence negated, and whereupon, he contends that the afore conclusive and binding verdict, does also, govern the lis at hand. However, the afore made submissions also cannot come to be accepted by this Court, as a reading, of, the verdict of the Allahabad High Court, as borne in Annexure P-5, does not, carry therein, any commonality in facts or in reliefs with the lis at hand, (ii) especially, when lis at hand is hinged, upon, the apt validity or survivability of the afore clauses borne, in Annexure P-2, de hors, any apposite replacement or substitutions thereto being made in the year, 2017, whereas, the verdict of the Allahabad High Court embodied in Annexure P-5, is singularly grooved, vis-À-vis, the validity of an advertisement notice

issued in the year, 2014, and, as became made in pursuance to the recruitment Rules, 2013, rules whereof became pronounced therein, to be kept in abeyance, till they do not become part of the statute. However, since Mr. Shreedhar, has not made any address before this court, that the alike therewith, R&P Rules of the year, 2013, in pursuance whereof the writ petitioners became initially engaged, on a contractual basis, rather against the advertised post(s) of Assistant Professors, being not made a part of the statute, and, hence, theirs not acquiring any colour of hue of validity. The sequel of the afore is that respondents concerned are deemed to accept the validity of the Rules of 2013, in pursuance whereof, the respondents concerned initially engaged the writ petitioners, on a contractual basis, against the advertised posts of Assistant Professors.

13. In summa, there is merit in the writ petitions and the same are allowed in the following term:

i. A mandamus is pronounced upon the respondents to forthwith constitute a selection committee, and, preceding thereto to issue an advertisement notice, for ensuring the participations thereof of the writ petitioners, if each of them has nowat completed three yearsâ?? of contractual service, for determining theirs suitabilities to seek the benefits, of, clause-3 of Annexure P-2. The entire exercise be completed within a period of two weeks hereafter.

In the afore terms, the petitions stand disposed of, so also, pending miscellaneous applications, if any.