
(2014) 08 KL CK 0085
In the High Court Of Kerala
Case No : WP (C). No. 7752 of 2014 (T)

K. Anwar

APPELLANT

Vs

Mahatma Gandhi University

RESPONDENT

Date of Decision : 21-08-2014

Acts Referred:

Citation : (2014) 08 KL CK 0085

Hon'ble Judges : A.K. Jayasankaran Nambiar, J

Bench : Single Bench

Advocate : T.O. Xavier, Advocate for the Appellant; Varghese. M. Easo and P. Leelakrishnan, SC, Advocate for the Respondent

Judgement

A.K. Jayasankaran Nambiar, J.—The petitioner is a person who was appointed, on contract basis, as Principal of the University College of Teacher Education, Nedumkandam, which is a self financing institution run by the Mahatma Gandhi University. The petitioner initially joined service as a Lecturer in General Education in the University College of Teacher Education, Elanthoor in the scale of pay of Rs. 8,000-275-13500. It was while working in the said post that he was appointed as Principal of the University College of Teacher Education, Nedumkandam on contract basis. The writ petition was filed when the respondent University did not pay the petitioner his salary for the period from November, 2013 onwards. The prayer in the writ petition is for a direction to the University to release the arrears of salary of the petitioner from November, 2013, onwards and for a further direction to the respondent University to regularise the service of the petitioner as Principal of the University College of Teacher Education, Nedumkandam.

2. A counter affidavit has been filed by the respondent University wherein it is stated that the appointment of the petitioner was pursuant to a press release for engagement of Principal on contract basis for a consolidated monthly remuneration of Rs. 20,000/-. The petitioner had responded to the said press release and was appointed as Principal pursuant to the interview that was

conducted for the said purpose. The engagement of the petitioner is stated to be for a limited period of one year on contract basis and hence, it is argued, that the request of the petitioner for the grant of a scale of pay as applicable to regular appointees to the post of Principal, cannot be extended to him. On the issue of regularisation, it is contended that persons appointed on contract basis do not hold any post on a regular scale of pay and that the mere fact that they worked for sometime in the said post, on contract basis, cannot be a reason for directing regularisation of their service. The decision of the Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, and the subsequent decision in Indian Drugs and Pharmaceuticals Ltd. Vs. Workman, Indian Drugs and Pharmaceuticals Ltd., , Kendriya Vidyalaya Sangathan and Others Vs. L.V. Subramanyeswara and Another, and Hindustan Aeronautics Ltd. Vs. Dan Bahadur Singh and Others, are also pressed into service for substantiating their contention against the regularisation of service of the petitioner. In the reply to the counter affidavit, the petitioner has placed reliance on a Government order dated 19.07.2014 which indicates that the Government had decided that the scale of pay for a Principal appointed by placement in Self Financing Colleges/Training Colleges in the State should be in the range of Rs. 37,400-67,000 with an increment of 5% of basic pay. Ext. P10 Government order is relied upon by the petitioner for contending that he too should be offered the same scale of pay since he is working as a Principal of the University College of Teacher Education.

3. I have heard Smt. Seetha Kutty Amma, the learned counsel for the petitioner and Sri. Varghese M. Easo, the learned Standing counsel for the respondent University.

4. On a consideration of the facts and circumstances of the case, I am of the view that the writ petition must fail. The petitioner is a person who was appointed as a Principal of the University College of Teacher Education, Nedumkandam on contract basis. This is borne out by Ext. P1 appointment order that was issued to him and which determines the rights of the petitioner and the conditions of his service. The counter affidavit filed by the respondent University discloses that the appointment of the petitioner as Principal on contract basis was on condition that the remuneration payable to the petitioner would be a consolidated one of Rs. 20,000/- per month. This being the case, the petitioner cannot have a claim for a remuneration, other than what is indicated in the appointment order that is issued to him. The past service of the petitioner as a Lecturer, against a scale of pay that was sanctioned for the said post, cannot be cited as a ground for claiming a higher scale of pay when the terms of appointment of the petitioner make it very clear that his is not a regular appointment to a post but a contract appointment subject to the terms and conditions in the appointment order. The claim of the petitioner, for a higher pay in a pay scale that is sanctioned for a regular post, cannot be legally countenanced and is hence rejected.

5. As regards the contention of the petitioner with regard to regularisation in service, it has to be borne in mind that regularisation in service is an exception to the general rule that appointments are normally to be made in accordance with the rules governing recruitment, of the establishment concerned. In the instant case, the appointment made is on a contract basis and hence not a regular mode of appointment as per the rules in force. That apart, the petitioner was appointed only with effect from June 2013 and hence it is not a case where the petitioner has been working for a long period, against a sanctioned post and consequent to an irregular mode of appointment, so as to warrant a regularisation in service. The petitioner's claim for regularisation in the post cannot, therefore, be legally sustained.

6. It is brought to my notice by counsel for the petitioner that, notwithstanding the directions in the interim order of this Court dated 16.07.2014, the respondent University has not paid the petitioner the arrears of consolidated remuneration for the period from November, 2013 onwards. Learned counsel for the respondent clarifies, however, that the disbursal of arrears has not been effected solely because the petitioner did not execute the agreement as contemplated in Ext. R1(b) memo issued by the University. Under these circumstances, it is made clear that if the petitioner complies with the formalities indicated in Ext. R1(b) memo forthwith, the respondent University shall disburse the arrears of remuneration due to the petitioner within a period of two weeks therefrom.

Subject to the above direction, the writ petition is dismissed.