
(1998) 01 P&H CK 0186
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 2790 of 1996

Maharishi Dayanand University

APPELLANT

Vs

Shobha Chaudhry

RESPONDENT

Date of Decision : 13-01-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 115

Citation : (1998) 119 PLR 35 : (1998) 1 RCR(Civil) 709

Hon'ble Judges : Sat Pal, J

Bench : Single Bench

Advocate : Ashok Aggarwal and Harsh Aggarwal, for the Appellant; Devinder Singh and I.S. Balhara, for the Respondent

Final Decision : Allowed

Judgement

Sat Pal, J.—This petition has been filed by M.D. University, Rohtak (herein after referred to as "the University") against the Order dated 7.6.1996 passed by the Additional District Judge, Rohtak in Civil Appeal No. 144 of 1996. By this order, the learned Additional District Judge accepted the appeal of respondent Shobha Chaudhary (herein after referred to as "the plaintiff") and restrained the University from terminating the services of the plaintiff during the pendency of the suit filed by the plaintiff.

2. Briefly stated the facts of the case are that in the year 1991, the University advertised three posts of Lecturers in Statistics. Out of these three posts, two posts were regular posts. The third post was a leave vacancy post. Since the plaintiff who claims herself to be eligible for these posts, was not called for interview, she filed a civil suit in a Civil court and got an interim order from the Court directing the University to allow the plaintiff to appear for interview. It was pursuant to an order of the Civil Court that the plaintiff was interviewed by the Selection committee. It is also an admitted fact that after the plaintiff was interviewed by the Selection Committee, the suit was dismissed as withdrawn at the request of the plaintiff.

3. The Selection committee recommended the names of five candidates and the name of the plaintiff figured at Sr. No. 4 in the list of selected candidates. The candidates whose names figured at Sr. No. 1 and 2, were appointed against regular posts and one Mrs. Ratna Raj Laxmi whose name figured at Sr. No. 3 was issued appointment letter on 16.11.1991 against the leave vacancy.

4. The plaintiff whose name figured at S.No. 4 in the Selection list was also offered appointment to the post of Lecturer in the Department of Economics against a leave vacancy for a period of six months vide letter dated 23.1.1992. In Para-6 of this letter, it was stated that if she accepted the offer she should report to the Head, Department of Economics of the University who would allow her to join duties after Sh. Rajinder Chaudhary Lecturer proceeds on leave. Vide letter dated 27.3.1992, the plaintiff was informed by the University that the panel from which her appointment had been made was duly approved by the executive counsel of the University vide resolution No. 28 dated 27.11.1991. On 25.3.1992, the plaintiff submitted a representation to the Vice Chancellor of the University requesting therein to regularise her appointment for the entire period of leave vacancy of lecturer in the Department of Economics. In reply to this representation, she was informed by the University vide letter dated 30.3.1992 that she had been allowed to continue as Lecturer in the Department of Economics on temporary basis (against the leave vacancy) till Sh. Rajinder Chaudhary Lecturer in Economics joins his duty. Vide letter dated 16.12.1992 (copy Annexure H) the office of Registrar of the University informed the Head, Department of Economics that the plaintiff who was working as Lecturer in the Department of Economics, may be allowed to continue in said department so long as any leave vacancy exists in the department. Vide letter dated 20.2.1993 (copy Annexure I) the office of the Registrar further informed the Head, Department of Economics that the Vice Chancellor had ordered that the plaintiff who was working as Lecturer in Economics department against the leave vacancy would be regularised as and when a regular post of Lecturer became available in the department of Economics.

5. As Sh. Rajinder Chaudhary was to re-join the post of Lecturer in the Department of Economics on 29.2.96, the plaintiff was relieved from the post of Lecturer on 28.2.1996. Thereafter she filed the suit for permanent injunction and mandatory injunction in the Court of Civil Judge (SD) Rohtak. Alongwith the suit the plaintiff filed an application under Order 39 Rules 1 and 2 read with Section 151 CPC for interim injunction. The learned Civil Judge (SD) Rohtak vide his order dated 8.4.96 dismissed the application filed by the plaintiff under Order 39 Rules 1 and 2 CPC. In this order the learned Civil Judge held that there was no proof that any post of the same subject was advertised by the University or there was any leave vacancy at present and since Dr. Rajinder Chaudhary had joined his duties, two persons could not be allowed to work against one post. Against the aforesaid order dated 8.4.1996, the plaintiff filed an appeal which was allowed by the learned Additional District Judge, Rohtak vide his order dated 7.6.1996. Against the order dated 7.6.1996 passed by the learned Additional

District Judge, the present petition has been filed by the University.

6. Mr. Aggarwal, the learned senior counsel appearing on behalf of the University submitted that the plaintiff/respondent was appointed as Lecturer in the Department of Economics purely on temporary basis against the leave vacancy for a period of six months vide letter dated 23.1.1992 and para-6 of this letter clearly indicated that the said leave vacancy had occasioned as Sh. Rajinder Chaudhary Lecturer was to proceed on leave. He submitted that the letter dated 10.3.1992 written by the plaintiff herself to the Vice Chancellor clearly indicated that the plaintiff was appointed as Lecturer in Statics in the Department of Economics for six months against the leave vacancy of Sh. Rajinder Chaudhary who had proceeded on leave for one year. He submitted that vide letter dated 30.3.92 the office of the Registrar had informed the plaintiff that the Vice Chancellor had allowed her to continue as Lecturer in the Department of Economics on temporary basis till Sh. Rajinder Chaudhary Lecturer in Economics joined his duties. He submitted that admittedly Sh. Rajinder Chaudhary was to join his duty on 29.2.1996, the plaintiff was accordingly relieved from her post on 28.2.1996. He, therefore, contended that the plaintiff had no right to, continue to hold the post of Lecturer in the Department of Economics after Sh. Rajinder Chaudhary joined his duty. In support of this submission, the learned counsel placed reliance on a Division Bench judgment of this Court in *State of Punjab v. Avtar Kaur* 1991(3) R.S.J. 57.

7. The learned counsel further submitted that a person who has been appointed against leave vacancy, has got no right to be regularised even the appointment of such a person was made on the recommendations of duly constituted Selection Committee. In support of this submission, he placed reliance on two judgments of" this Court in *Veena Kumari v. Director of Higher Education, Haryana* 1994(7) S.L.R. 160 and *Narain Singh v. State of Haryana* 1994(2) R.S.J. 539.

8. With regard to the contention of the learned counsel of the plaintiff that subsequent to the filing of the revision petition a vacancy of Lecturer in the Department of Economics had fallen vacant on account of resignation of Dr. Kailash Sarap, the learned counsel on the basis of instructions received by him from the Registrar of the University vide his letter dated 8.8.97, submitted that the plaintiff who possessed M.Sc. degree in Math and Ph. D. in Math with specialization of Information Theory in Statistics did not fulfill the prescribed qualification for the post which had fallen vacant as she was neither M.A./M.Phil/ Ph.D/Math in Economics.

9. Mr. Balhara, the learned counsel appearing on behalf of the plaintiff submitted that though the plaintiff was initially appointed as Lecturer in the Department of Economics purely on temporary basis against the leave vacancy for a period of six months vide letter dated 23.1.1992 but vide letter dated 20.2.1993 (Annexure I) she was informed that Vice Chancellor was pleased to order that she would be regularised as and when a regular post of, lecturer becomes

available in the department of Economics. He submitted that Head, Department of Economics in his note dated 28.8.1992 (copy Annexure F) had stated that the plaintiff who was teaching Mathematical papers in the department of Economics would be an asset to the department for teaching Mathematical papers if she was allowed to continue till any leave vacancy existed in the department and during the tenure of her services if any post of Lecturer fell vacant then she be regularised on that post. He further submitted that the copy of the resolution passed by the departmental committee of the Department of Economics in its meeting held on 11.11.1992 (copy Annexure G) showed that at least three teachers were required in the said department and one of them must be M.A. (Mathematics) with specialization in Statistics. He, therefore, contended that since the plaintiff possessed the degree of MA. (Mathematics) with specialization in Statistic, she ought to have been regularised in terms of the letter dated 20.2.1993 (Copy Annexure I). In support of his submission, the learned placed reliance on a Division Bench judgment of this Court in the case of Mrs. Ratna Raj Laxmi v. M.D.U. Rohtak 1996(1) R.S.J. 240. He submitted that in the said case petitioner Ratna Raj Laxmi whose name figured at Sr. No. 3 in the same panel was appointed against the leave vacancy vide appointment letter dated 16.11.1991 and in the letter of appointment, it was mentioned that as and when a regular vacancy fell, her appointment would be treated as regular from that very date and once it was found by the High court that there was a vacancy of Lecturer in Statistics, the writ petition filed by her was allowed.

10. The learned counsel submitted that in any case after the present revision petition was filed by the University, a post of Lecturer had fallen vacant in the department of Economics on account of the resignation of Dr. Kailash Sarap and as such the University should be directed to appoint the plaintiff against this post during the pendency of the suit.

11. I have given my thoughtful consideration to the submission made by the learned counsel for the parties and have perused the records. It is not disputed that the University had advertised three post of Lecturers in Statistics in the year 1991 and in pursuance of the said advertisement, the Selection Committee had recommended the names of five candidates including the plaintiff. It is also not disputed that the name of the plaintiff figured at S.No. 4 in the panel though the University had advertised only for three posts of Lecturer in Statistics. From the letter of appointment dated 23.1.1992, it is evident that the plaintiff was appointed purely on temporary basis against the leave vacancy for a period of six months and she was to join duties only after Sh. Rajinder Chaudhary Lecturer proceeded on leave. In the case of Shankarsan Dash Vs. Union of India, , a Constitution Bench of the Supreme Court held that inclusion of a candidates name in the merit list does not confer any right to be selected. But the learned counsel of the plaintiff relying on a Full Bench judgment of this Court in the case of Hardwari Lal Vs. G.D. Tapase and Others, has contended that plaintiff was entitled to be regularised in terms of the letter dated 20.2.1993 (Annexure I), by which the Vice Chancellor had ordered that the plaintiff would be regularised as

and, when a regular post of Lecturer became available in the department of Economics. The case of the plaintiff is that one post of Lecturer for teaching Statistics in the Economics department existed in November, 1992 in terms of resolution dated 11.11.1992 passed by the Departmental committee of the Department of Economics and as such the services of the plaintiff could not be terminated even on re-joining of Sh. Rajinder Chaudhary. The case of the University is that there is no post of Lecturer in Economics department for which the plaintiff possesses the requisite qualifications.

12. The question as to whether one post of Lecturer in Statistics mentioned in the resolution dated 11.11.1992 passed by departmental committee of Department of Economics was approved by the competent authority of the University can not be decided in the present petition which has arisen from the proceedings under Order 39 Rules 1 and 2 CPC. This point can be decided only after the parties have led their evidence during the trial of the suit. Similarly the question whether the decision of the University not to make further appointment out of the panel of five candidates (which was duly approved by the University) is arbitrary or valid, can be decided in the main suit and not in the present proceedings. In this connection reference may be made to a recent judgment of the Supreme Court in Government of Orissa through Secretary, Commerce and Transport Department, Bhubaneswar Vs. Haraprasad Das and Others, The relevant portion from this judgment is re-produced herein below:

"Merely because there were some vacant posts of Copy Holders and the Director of the Press had recommended to the Government to fill up those posts, it was not open to the Tribunal to direct the Government to fill up those posts even though it had good reasons not to do so. It should have been appreciated by the Tribunal that mere empanelment or inclusion of one's name in the selection list does not give him a right to be appointed. So also if the Government decides not to make further appointments for a valid reason, it cannot be said that it has acted arbitrarily by not appointing those whose names are included in the selection list. Whether to fill up a post or not is a policy decision and unless it is shown to be arbitrary, it is not open to the Tribunal to interfere with such decision of the Government and direct it to make further appointments."

From the above judgment, it is clear that an authority may decide not to make further appointment for a valid reason.

13. Since I have come to the conclusion that the question as to whether a regular vacancy had occurred or not, can not be decided in these proceedings, the ratio of the judgment in the case of Mrs. Ratna Raj Laxmi (supra) can not be applied at this stage.

14. For the reasons; recorded herein above, the petition is allowed and the impugned order dated 7.6.1996 passed by the learned Additional District Judge, Rohtak is set aside. Consequently the application of the plaintiff filed under Order 39 Rules 1 and 2 CPC stands dismissed. However, keeping in view the facts and

circumstances of the case, I direct the learned trial Court to decide the suit expeditiously preferably within six months. Parties are left to bear their own costs.