
(2009) 02 P&H CK 0071
In the Punjab And Haryana At Chandigarh

Maninder Singh and Another	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 02-02-2009

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Constitution of India, 1950 — Article 14, 16

Citation : (2009) 154 PLR 160

Hon'ble Judges : Nirmaljit Kaur, J; Ashutosh Mohunta, J

Bench : Division Bench

Judgement

Ashutosh Mohunta, J.—This order shall dispose of CWP No. 11144-CAT of 2002 filed by two Lecturers in Architectural Assistantship and CWP No. 11145-CAT of 2002 filed by a Lecturer in Civil Engineering, all appointed in the Cental Polytechnic, Sector 26, Chandigarh (now called Chandigarh College of Engineering and Technology). The challenge in both the writ petitions is to a common order passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (for short "the Tribunal"), disposing of two Original Applications since both raised similar questions of law and facts. In view of same order dated 4.7.2002, being under challenge in both the writ petitions, we dispose of both the writ petition by a common order. However, for the facility of reference, the facts are taken from CWP No. 11144-CAT of 2002.

2. Vide advertisement dated 6.11.1988 (Annexure P-I), one post of Lecturer in Architectural Assistantship was advertised. Petitioner No. 1- Maninder Singh applied in response to the said advertisement and was selected after interview by a duly constituted Selection committee consisting of Home Secretary, Director Technical Education, Technical Expert and Principal from the Chandigarh College of Architecture and was appointed vide appointment letter dated 9.2.1989 (Annexure P-2). Petitioner No. 2-Su-madha Talwar was appointed vide appointment letter dated 2.2.1990 (Annexure P-3), on the basis of requisition from the Employment Exchange and on the recommendations of the Selection Committee. Both the petitions joined service on 28.2.1989 and 6.2.1990,

respectively.

Though the letters of appointment of the petitioners state that the appointment is ad hoc, however, admittedly they were being paid the regular pay scale, increments and Group Provident Fund (GPF) was also being deducted from their salary. The nature of duties being performed by the petitioners and other regular Lecturers were identical. The names of the petitioners were also included in the tentative seniority list (Annexure P-5).

3. Admittedly, there were no rules governing the service when the petitioners were appointed. The rules governing the Service were promulgated for the first time by the respondents on 16.3.1995, called "Central Polytechnic, Chandigarh (Group B Post) Recruitment Rules, 1995 which came in effect on 1.4.1995. As per the said rules the post was designated as Group B post and was required to be filled in consultation with Union Public Service Commission (herein after referred to as UPSC) by way of direct recruitment.

4. The petitioners gave representations for regularization of their services and the respondent Chandigarh Administration referred the case to UPSC vide letter dated 16.2.1996, for regularization of the services of the petitioners. However, the UPSC vide letter dated 20.01.1998, did not agree with the proposal of Chandigarh Administration and decided that the posts should be filled up on regular basis as per the notified rules of 1995.

5. Feeling aggrieved, the petitioners invoked the jurisdiction of the Tribunal, by filing Original Applications u/s 19 of the Administrative Tribunals Act, 1985 (for short "the Act") seeking a declaration that they be treated as regularly appointed Lecturers from the date of their initial appointment. The said applications filed by the petitioners have been dismissed by the Tribunal by a common order dated 4.7.2002, which is subject matter of challenge in these two cases. The operative part of the impugned order dated 4.7.2002, is reproduced hereunder for ready reference:

Once their appointments are held to be only on ad hoc basis, till regularly selected candidate become available, the prayer made by the applicants in this O.A. To treat them as regularly appointed Lecturers from the dates of their initial appointments, has to be rejected. All that they are entitled to is that as and when regular recruitment under the rules, mentioned above, is conducted, they shall be at liberty to apply for the same. We hold that they shall be entitled to be considered with other candidates for their regular appointments and the respondents shall give them the weightage with regard to the experience gained and service rendered by them under the respondents in the Central Polytechnic. Considering the nature of service rendered by them, in Annexure A/1 this aspect has also been considered and we deem it to be an assurance on the part of the respondents. We find it mentioned that as far as ad hoc appointees are concerned, in case they apply, they should be considered by relaxing the age limits etc. respondents shall be bound by such an assurance, as given in

Annexure A-I though by only one of the respondents on the point of relaxation of age for the length of period they have already rendered service under the respondents.

6. It is worthwhile to mention that the petitioners are continuing in service till dated. During the pendency of the O.A., the learned Tribunal granted interim order, directing the respondents to maintain status quo regarding the services of the petitioners, which continued till the decision of the O.A. vide impugned order dated 4.7.2002. Thereafter, this Court, in the present writ petition, vide interim order dated 24.07.2002, directed that in the meantime the petitioners would be allowed to continue to work on the posts on which they were working. Vide order dated 9.9.2003, the interim order was made absolutely during the pendency of present writ petition.

7. Learned Counsel for the petitioners has pointed out that at the time of appointment of the petitioners in the year 1989-90, there were no statutory Rules applicable in respect of advertised posts. Therefore there was no question of seeking approval from the UPSC. It was only in the year 1995 that the Chandigarh Administration framed its own Rules which provide that the post in question is Group B and is required to be filled in consultation with the UPSC. The said rules cannot be applied to the petitioners retrospectively. He has further argued that use of the word "ad hoc" in the appointment letter of the petitioners is a misnomer as the petitioners were selected by a duly constituted selection Committee after due advertisement. They were being paid the regular pay scale, increments and Group Provident Fund (GPF) was also being deducted from their salary.

8. The nature of duties being performed by the petitioners was identical to other Lecturers and their names were also included in the tentative seniority list.

9. The petitioners have placed reliance upon an order passed by the Hon'ble Supreme Court in Dr. Gagan Inder Kaur and Ors. v. Union Territory of Chandigarh and Ors. decided on 17.10.1995 (Annexure P-8) and the judgment of this Court in the case of Sumangal Roy v. Union of India and Ors. 2008 (2) S.C.T. 407. In Dr. Gagan Inder Kaur's case (supra), the petitioners were appointed as Lecturers (College Cadre) in the year 1985-86 on ad hoc basis. At the time of appointment, the Rules applicable were Punjab Subordinate Education Service Rules, 1937. The post of Lecturer was a Class-III post and was not falling within the purview of Public Service Commission. The New Recruitment Rules in respect of Lecturers were notified on 21.1.1991. It was the case of the Administration that they are required to be appointed in consultation with the UPSC. The Hon'ble Supreme Court held that though the Lecturers have been appointed on ad hoc basis, but really it is an appointment on regular basis. It was held that since the Rules of 1937 were in force at the time of appointment, therefore, consultation with the UPSC was not required for the post of Lecturer. It was held to the following effect:

In view of the facts mentioned above, it appears that the appointment of the

petitioners and other Lecturers in the Union Territory of Chandigarh, who were appointed on ad hoc basis during the period 1977 till the publication of the 1990 Rules though described as an ad hoc appointment is really an appointment on regular basis made in accordance with the procedure that was required to be followed for making a regular appointment under the Punjab Rules of 1937 which were in force at that time. The said appointments have been described as being ad hoc in nature on the erroneous impression that consultation with the UPSC was necessary after 1977 for making regular appointment on the post. Since the Punjab Rules of 1937 had continued in force, with UPSC was not required for the post of Lecturer which continued to be a Class-III post till the publications of the 1990 Rules on February 21, 1991. It is no doubt true that as a result of the retrospective effect given by Rule I(iii) of the 1990 Rules Class II Status (Group-B) has been conferred on Lecturers with effect from April 1, 1975 and as a result the post of Lecturer has to be treated as Class-II post with effect from April 1, 1975 and the said post has come under the purview of the UPSC by virtue of the UPSC (Consultation) Regulations, 1958 which only exclude Class III and IV posts from the purview of UPSC.

The said retrospective amendment cannot, in our opinion, have the effect of depriving the petitioners of their right of having been substantively appointed on the post of Lecturer prior to the coming into force of the 1990 Rules on February 21, 1991.

Since we are of the opinion that the appointment of the petitioners on the post of Lecturer was made under the Punjab Rules of 1937, which were in force at that time, and the said appointment, though described as being ad hoc in nature was regular appointment, the petitioners and other lecturer similarly situated would not be effected by the retrospective effect given by Rule I(iii) of the 1990 Rules so as to require the appointment of the petitioners to be regularized in consultation with the UPSC.

The writ petition is accordingly allowed and it is directed that the appointment of the petitioners and other Lecturers similarly situated who were appointed prior to the publication of the 1990 Rules on February 21, 1991, though described as being ad hoc in nature shall be treated as regular appointment and the said lecturers shall be given the benefits accruing to them on that basis, we do not express any opinion as regards appointments on the post of Lecturers that were made after coming into force of the 1990 Rules on February 21, 1991. No costs.

10. The decision of the Hon''ble Supreme Court in Dr. Gagan Inder Kaur's case (supra) was followed by this Court in the case of Sumangal Roys' case (supra). This Court while allowing a bunch of writ petitions, made following observations in para 13 of the judgment:

Learned Counsel for the respondents could not dispute the five reasons recorded by this Court in order dated 4.12.2001, i.e. the petitioners did possess the prescribed qualifications at the time of their initial appointment; they had been

appointed after advertisement of the posts and on all-India basis; they were appointed on the recommendations made by the Selection Committee constituted by the Chandigarh Administration; they have continuously served in the government College of Arts, Chandigarh, without any blemish and that it took more than nine years to the Chandigarh Administration, the Union Public Service Commission and the Government of India to finalize the recruitment rules.

11. As detailed above the position in the present case is almost the same as in the Dr. Gagan Inder Kaur's case and Sumangal Roy's case (*supra*). Even at the cost of repetition it is reiterated that the petitioners in the present case also possessed the prescribed qualification as per advertisement at the time of initial appointment and they had been appointed after due advertisement of posts/requisition from employment exchange; they were appointed on the recommendations of the Selection Committee constituted by the Chandigarh Administration and they are continuing to service without any blemish till date. We may add that they have been given regular pay scales and increments and their GPF is being deducted. Their names have ever been shown in the seniority list.

12. We do not see any thing more which can be said to be required to treat the appointment of the petitioners as regular appointment more so when as on date they have almost twenty years of service to their credit. Therefore, even if the appointment is termed "ad hoc" in appointment letter but substantially it is a Regular appointment.

13. It is worthwhile to note that the judgment of Hon''ble Supreme Court in Dr. Gagan Inder Kaur's case (*supra*) has been given effect to by the Administration in respect of number of College Lecturers recruited about, the same time and except for technical objections the learned Counsel for the respondents have failed to show any plausible reason to make a distinction in the case of the petitioners. As held by Hon''ble Supreme Court and this Court in catena of judgments, the State of required to act like a model employer and its action should qualify on the touchstone of fairness, reasonableness and equality as enshrined in Article 14 and 16 of the Constitution of India.

14. It was probably in this view of the matter that the Chandigarh Administration itself took the decision to regularize the services of the petitioners. However, under a misconceived notion, that posts are Group B posts, the case was sent to UPSC for its prior approval and the proposal was struck down by UPSC. We find that it was only under the 1995 Rules, that the posts were for the first time classified as Group B posts. No instructions/rules have been placed before us to show that posts were earlier also Group B or Class II posts. In absence of such instructions or rules there was no question of prior approval of the UPSC being required for appointment of the petitioners on regular basis and the stand of the respondent in this regard is misconceived.

15. While dismissing the O.A.s of the petitioners, the learned Tribunal has placed reliance mainly on a condition in the appointment orders to the effect that the ad hoc appointment shall not bestow on the petitioner a claim for regular appointment. We are of the considered opinion that the claim of the petitioner cannot be thrown out of the Court merely on the basis of the said condition, once it is found that the initial appointment of the petitioners is substantially a regular one.

16. It would be unfair to the learned Counsel for the respondents not to notice that reliance was placed by them on the judgment of this Court in the case of *Anupama Bhardwaj v. Central Administrative Tribunal* 2008 (3) S.C.T. 617 to contend that the petitioners are not entitled to the relief claimed. We have gone through the judgment in the case of *Anupama Bhardwaj* (supra) and find that the ratio of law laid in the said case is not applicable to the facts and circumstances of the present case. In the said case the appointments were made after the promulgation of the new rules, whereas in the present case the appointment was made before the rules came into force, apart from other marked distinctions.

In view of the above, we are of the opinion that order passed by the learned Tribunal is not sustainable in law. Consequently, the same is set aside. It is held that the appointment of the petitioners, though titled as ad hoc, is in fact regular appointment and, therefore, the respondents are directed to treat the petitioners as regular appointees from the date of their initial appointment. The respondents are directed to grant all consequential benefits to the petitioners in accordance with law, expeditiously, preferably within a period of three months. The writ petitions stand disposed of in the above terms.