
(2005) 04 P&H CK 0064
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4738 of 1989

Naresh Kumar and Another	Vs	APPELLANT
The State of Haryana and Others		RESPONDENT

Date of Decision : 06-04-2005

Acts Referred:

Haryana Education Services College Cadre (Group B) Service Rules, 1986 — Rule 2, 3, 6

Citation : (2005) 140 PLR 711

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : Vivek Singla, for the Appellant; M.S. Sindhu, D.A.G., for the Respondent

Final Decision : Dismissed

Judgement

Tapen Sen, J.—The two Petitioners herein were called for interview as they possessed necessary qualifications and also the eligibility as their names were duly registered with the Employment Exchange. Since regular vacancies of Lecturer in the subject "Biology" were lying vacant in the Government College at Mohindergarh, the Respondents decided to fill up these posts by making ad hoc appointments on a three months basis by inviting eligible applicants from the Employment Exchange, It is in that context that the petitioners have stated in Paragraphs 3 and 4 that they were called for interview. Subsequently, it has further been stated, that they were both selected on the basis of merit and Appointment Letters were issued, It has further been stated in Paragraph 4 that one such Appointment Letter dated 21.10,1988 pertaining to the Petitioner No. 1 was issued and the Petitioner No. 2 was also appointed on identical terms on 16.8,1988. The Appointment Letter pertaining to the Petitioner No. 1 is Annexure IM. The Petitioner No. 2 however, has stated that from the terms and conditions of the Appointment Letter as contained in Annexure P-L the appointment was shown as Part-Time Appointment of Lecturers on consolidated salary and this consolidation of salary was illegal because no regular pay scale was given as was

done in the case of other Lecturers, The petitioners have also stated that both of them were appointed against regular permanent vacancies and that they were attending College from 9,00 A.M. to 4,00 P.M, and therefore, they were functioning as full fledged Lecturers although they were described as Part-Time Lecturers. The action resorted to by the Respondents has been complained of as being mala fide with the intention of restraining the Petitioners from seeking equitable remedies such as regular pay-scale etc. which was given to other similarly situated permanent/temporary Lecturers, According to the Petitioners such an action violates the Principles of "Equal Pay for Equal Work".

2. In the backdrop of what has been pleaded, the petitioners have prayed for the issuance of a Writ of Mandamus directing the Respondents not to terminate their services on the close of the Academic Session till regular appointments are made and also for issuance of a Writ of Mandamus directing the Respondents to pay to them the same salary and allowances as are paid to other permanent/temporary Lecturers i.e. the scale of Rs. 2200-4000.

3. The learned counsel for the petitioners draws attention of this Court to Civil Miscellaneous Application No. 5765 of 1989, which was filed in the instant case wherein it was stated that the petitioners had been threatened with termination of service and that there was also a likelihood that the Respondents would terminate their services, Before proceeding to deal with the rival contentions of the parties, it would be necessary to observe that on 12.7.1989, a Division Bench of this Court vacated the Order of stay,

4. It is the further case of the petitioners that they are entitled to continue on an ad hoc status till regular candidates duly recommended by the Public Service Commission, are allowed to join,

5. The learned counsel for the petitioners relies upon a Judgment of the Hon''ble Supreme Court of India in the case of *Rajbinder Singh v. State of Punjab and Ors.* 1988(1) S.L.R. 351 (S.C.).

6. In the aforementioned judgment of the Hon''ble Supreme Court of India, the petitioner before their Lordships, was an ad hoc Lecturer and he was appointed for a fixed term. His grievance was that he was likely to be removed from service so that he would be deprived of his vacation salary, The Hon''ble Supreme Court of India took notice of the practice of the Respondents in that case which used to appoint fresh people every time, with the object of depriving them their vacation salary. In the backdrop of the facts before their Lordships, the Hon''ble Supreme Court of India observed that in a number of Writ Petitions, the Apex Court had allowed the ad hoc Teachers to continue in service till persons regularly selected by the Public Service Commission were appointed. They further observed that the Respondents ought to extend the benefit of those Orders to all other ad hoc Lecturers and that it was not proper to drive them to the Apex Court for similar relief.

7. In the context of that the learned Counsel for the petitioners has to say, it will

be necessary to look into the counter-affidavit of the Respondent Nos. 1 to 3 (referred to as Written Statement in this Court), A preliminary objection has been taken by the Respondents to the effect that C.W.P. No. 2812 of 1989 and C.W.P. No. 5030 of 1989 involving identical points have already been dismissed by Order dated 24.5.1989 and, therefore, this Writ Petition, also deserves to be dismissed, It has also been stated that the Writ Petitioners had already been relieved from their services with effect from the forenoon of 31.7.1989,

8. From a perusal of the Letter of Appointment as contained in Annexure P1, it is evident that "(a) the Petitioners were appointed on purely temporary Part-Time posts for a fixed period of three months with effect from 21.10.1988 with a clear stipulation that the appointment was purely temporary, part-time for three months and that it could be terminated at any time without showing any reason; and (b) that on the appointment, all departmental and Government Rules would apply."

9. In the counter-affidavit (referred to as written statement in this Court) it has been stated that keeping in view the administrative difficulties, the Government vide memo dated 24.10.1986 (Annexure R-I) had communicated the sanction of the Governor of Haryana by which powers were delegated to the College Principals for filling up short term vacancies of Lecturers in the Government Colleges of the State. It was also laid down, in the same letter, that powers of Appointment would be exercised only for vacancies of limited periods of one to three months and that the incumbents would be appointed on a fixed salary of Rs. 1,000/- per month. The petitioners having been appointed against short term vacancies of one to three months on a consolidated salary of Rs. 1,000/- per month and their services having been terminated and they having been relieved of their duties with effect from the forenoon of 31.7.1989, cannot now turn around and challenge the action of the Respondents as according to the learned counsel for the Respondents, they accepted the terms and conditions of their appointment with their eyes and ears open and therefore, in terms of the well-known principles of Qui Approbat Non Reprobt and following well-known tenets of law, the petitioners are barred under the principles of promissory estoppel and they cannot be allowed to blow "hot and cold" at the same time.

10. Mr, M.S. Sindhu, learned Deputy Advocate General for the State of Haryana vehemently contends that in case the terms of appointment were not acceptable to the petitioners, they should not have accepted to join the post at all. Having once accepted the terms and conditions of appointment, they cannot be allowed to turn around and challenge the same with a grievance that those terms and conditions amount to exploitation of unemployed forces of the country to achieve private gains and/or that the College concerned has not acted as a Model Employer,

11. Upon a bare reading of the pleadings on record available in this case, it is evident, with special reference to paragraph 5 of the counter-affidavit (referred to as written statement in this Court), that earlier, appointments in colleges used

to be made from a panel but in the year 1986, it was felt that the procedure of preparing panels and having appointments from these panels took a lot of time. The delay caused in making such ad hoc appointments was found to be harmful to the institution and/or instructional work of the students and therefore, powers were delegated to the principal vide Annexure R-I but such delegation was limited to the extent of filling only "short term vacancies" which were confined at the outer- limit of 1 to 3 month. Mr. M.S. Sindhu, learned Deputy Advocate General for the State of Haryana also draws attention of this Court to the "Haryana Education Services College Cadre (Group B) Service Rule, 1986" (for short "the Rules") and submits that if such a mere delegation of powers interpreted or construed to mean that it is a conferment of powers of appointment of Lecturers on the Principal, it would amount to rendering the aforementioned Rules totally otiose and obtuse.

12. In this context it would be necessary to once again revert to the contents of the Appointment Letter itself, Clause 2 thereof, clearly and in unequivocal terms lays down that "on this appointment all the department and Government Rules would apply."

13. Now, upon a bare perusal of clause 6 of "the Haryana Education (College Cadre) Group B Service Rules, 1986.", it is evident that appointments to any posts in the service shall be made only by the Government.

14. The word "Service" used in Rule 6 means the Haryana Education (College Cadre) Group-B Service. Under Rule 3, the service has been defined to include posts. shown in Appendix-A and Appendix-A speaks of College Lecturers. In other words, for appointment to the post of a lecturers, the same can only be done by the Government and "Government" has been defined under Rule 2(d) as the Haryana Government in the Administrative Department.

15. That being the position, this Court exercising jurisdiction under Articles 226 cannot be called upon to regularize an irregularity. A principal of a Government College, by reason of the aforementioned Rule 6 could not be said to have been the Competent Authority for purposes of appointment of a lecturer. At best, he could have had the power to make stopgap arrangements for a very short period of three to four months in the interests of better administration and that was done by Annexure R-I but such a temporary power/delegation cannot mean that the Principal of College takes upon himself the power of the Government as contemplated under Rule 6 of the aforementioned Rules. In the backdrop of the aforementioned provisions being in existence, the Judgment of the Hon'ble Supreme Court of India relied upon by the learned counsel for the petitioner cannot be said to apply in the facts and circumstances of the present case and that too when it is evident that the Rules were not produced before the said Hon'ble Court. For the foregoing reasons, this Court is unable to agree with the contentions of the learned counsel for the petitioners. Before parting, this Court must express its appreciation to both the learned counsels for having argued very fairly but for reason stated above, this writ petition must fail.

Dismissed.

In the facts and circumstances of this case there shall be no Order as to Costs.