

(2022) 05 OHC CK 0037

In the Orissa High Court

Case No : Writ Petition (C) No. 33209 Of 2020

Sabyasachi Mohanty

APPELLANT

Vs

State Of Odisha & Others

RESPONDENT

Date of Decision : 10-05-2022

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 227

Citation : (2022) 05 OHC CK 0037

Hon'ble Judges : Biswanath Rath, J

Bench : Single Bench

Advocate : N.K.Mohanty, A.Dash, Dr.J.K.Lenka, S.Ghosh, S.Das, P.K.Rath, S.K.Behera, P.Nayak, S.Das, S.Rat

Final Decision : Allowed

Judgement

Biswanath Rath, J

1. This is a Writ Petition filed by an ousted employee by the Employer, the National Law University of Odisha, Cuttack, herein after called as, "NLUO" seeking a challenge to the letter dated 17.10.2020 issued by the NLUO informing the Petitioner of its decision for not giving any further extension to the Petitioner in the Post of Assistant Finance Officer and that he will be relieved from his duties on 19th October, 2020 at 9 a.m. In the said letter the Petitioner was also directed to hand over charge along with all Files/Documents/Audit Reports in his custody to one Mr.Bibhu Prasad Kar, Assistant Registrar of the NLUO, particularly on 19th October, 2020 at 9 a.m. The Petitioner in assailing the impugned order at Annexure-6 has involved the following prayer :-

"Under the facts and circumstances as narrated above, this Hon'ble Court may graciously be pleased to issue notice to the Opp.Parties and after hearing the parties be pleased to :

(a) quash the letter dated 17.10.2020 under Annexure-6 issued by the O.P.No.5;

And

(b) direct the O.P.No.5 to reinstate the petitioner to the post of Assistant Finance Officer at National Law University, Odisha within a stipulated time period along with all consequential service benefits;

And

(c) O.P.No.4 may be directed to conduct an impartial and fair investigation taking into consideration the reports submitted by the O.P.No.3 and the Special Audit Report under Annexure-7 series.

And

(d) regularize the services of the petitioner with effect from 14.10.2018 along with all consequential service benefits;

And further be pleased to pass any other order/orders as deemed fit and proper.”

2. Factual aspect involving the case is that the Petitioner is a Holder of Degree in Master in Business Administration (Finance) from Sikkim-Manipal University and Master of Finance and control from the Utkal University. While working in the Choudwar Municipality, finding publication of an Advertisement on 17.10.2015 in the Odiya Premier “The Samaj”, vide Annexure-2 applied for the post of Assistant Finance Officer. The Petitioner was called for the interview vide letter dated 15.9.2016. The Petitioner claimed, involving a competitive selection process he was found successful in the interview, and therefore, was duly selected for the post of Assistant Finance Officer in the NLUO. Communication of his selection by the NLUO, vide their letter dated 14.10.2016 finds place at Annexure-4 of the Brief. Referring to Annexure-4, the Petitioner claimed, vide Clause-2 of the terms and conditions therein, he was offered with the Post initially for one year with further disclosure that the University has the rights to decide upon his continuation based on his satisfactory performance. In the same communication through the terms and conditions, the Petitioner was assured of long term employment and a favourable decision be taken on his continuation by the Employer with further information that the Medi-claim Insurance Policy purchased in his favour will cover both the Petitioner and his family. While disclosing the gross salary package, vide Clause-5 & Clause-6 of the terms and conditions, the Employer informed the Petitioner that his service in the University may be terminated without assigning any reason at one month’s notice or salary in lieu thereof with further rider in favour of the Petitioner that if he wants to quit the job that also required either one month’s notice or on payment of salary in lieu thereof. Further under Clause-7 of the terms and conditions the Petitioner was also informed that his appointment was subject to the Regulations of the University as may be in force at any time. In issuing such offer of appointment, the Petitioner was requested to communicate his acceptance and joining duty at the earliest on or before 1st November, 2016, failure of which offer of appointment shall stand cancelled. Further pleading disclosed, vide a

correspondence dated 4.11.2019, vide Annexure-5, the University communicated the Petitioner its decision in the matter of renewal of contractual service period in the NLUO. In a subsequent development the Petitioner was communicated with another

correspondence dated 17th October, 2020, vide Annexure-6 where it was communicated that it was decided that there was no need of grant of further extension to the Petitioner and that he shall be relieved from his duty on 19th October, along with other directions indicated herein. Accordingly, the Writ Petition is filed with the prayer indicated herein above.

3. Er.N.K.Mohanty, learned counsel for the Petitioner in the above background of the case in reference to the conditions of service, reading through Annexure-4, the Advertisement at Annexure-2 and looking to the nature of such Advertisement contended that the Advertisement nowhere disclosed that the engagement in the post of Assistant Finance Officer will be temporary, on the other hand the Advertisement only disclosed that filling up such Post will not only be contractual but Party selected shall also be entitled to consolidated pay. Er.Mohanty thus contended that once the Advertisement does not say the period of appointment, reading through the terms and conditions in the offer of appointment, vide Annexure-4, particularly through Clause-2 therein, there was no dispute that the offer of appointment was initially for one year and the continuation of the Petitioner was to depend on his satisfactory performance. It is taking at this stage to the extension in favour of the Petitioner, vide Annexure-5 and reading through the pleadings at the instance of the Petitioner at Paragraph-5 of the Brief, Er.Mohanty contended that though the Petitioner's terms under the offer of appointment, vide Annexure-4 was to expire on 31st October, 2017, he has been given extension in his post for another year to expire on 31st October, 2018. The Petitioner was again granted another extension of his service up to 17th October, 2019 for one year and through Annexure-5, the Petitioner was given the last extension commencing 18th October, 2019 but was not given further extension from 19th October, 2020. Taking here to the terms and conditions, Er.Mohanty reading through the condition at Clause-4 contended that the Petitioner was given a scope of continuation inasmuch as with likelihood of offer on long term employment. Er. Mohanty, learned counsel contended that for the condition at Clause-6 of the terms and conditions, in the event the Employer desired to take out the service of the Petitioner in the Post of Assistant Finance Officer, he ought to be given either one month's notice or to take out the service of the Petitioner on ending of the contractual period but however on payment of one month's salary in lieu of notice. In the above background, Er.Mohanty contended that Annexure-4 is the only offer of appointment with terms and conditions and the extensions provided to the Petitioner all through disclosed that the terms and conditions in his previous appointment letter hold good but with no affect on salary. Er.Mohanty, therefore, on reiteration of the Clause-6 of the terms and conditions in Annexure-4 contended that while granting extension the Employer continued with the terms and conditions with

offer of appointment and as the condition of service at Clause-6 is binding on both the Parties, in the event the Employer was not desirous of continuing with the Petitioner, it ought to have proceeded in terms of Clause-6 of the terms and conditions and there is no possibility of ouster of the Petitioner otherwise. Er.Mohanty thus contended, for the Employer in issuing the letter at Annexure-6 for terms at Clause-6 of the service condition at Annexure-4, the communication taking out the services of the Petitioner has no place to stand for being contrary to the terms and conditions set by the Employer itself. Er.Mohanty further taking into account the development taken place in the continuing of the Petitioner contended that as the Petitioner's service was found satisfactory, he has not only been provided several extensions but he was also granted an increase in his consolidated pay raising it from Rs.40,000/- earlier to Rs.50,000/- per month. Er.Mohanty further while alleging the action of the NLUO hit by Article 14 of the Constitution of India, contended, the impugned order suffers on account of violation of principle of natural justice. Er.Mohanty in reference to his pleading in the written note of submission contended that while the University continued with most of the engagements under the Advertisement and regularized many of them, it has singled out the Petitioner in not allowing him to further continue while even allowing the post to continue. In reference to further engagement, Er.Mohanty contended that in taking out the service of the Petitioner, there is no filling of such post as yet. However, the claim of the University that in the meantime, the post is already filled in but the person claimed to have joined is in the post of Finance Officer, which has nothing to do with the Petitioner's ouster in the post of Asst. Finance Officer. Er.Mohanty contended that even assuming the person joined on deputation making position of the Petitioner, Er.Mohanty taking aid of the settled principle holding the field contended that there should not be substitution of a contractual employee by engagement of another contractual employee. Er.Mohanty further contended, for there is continuing with the post by a Deputationist, this clearly indicates, the University is in desirous of continuing with such post and in the process, on illegal ouster of the Petitioner, the University has come to engage a person on deputation. Er.Mohanty thus claimed support of the law settled by the Hon'ble Supreme Court holding there cannot be replacement of a contractual employee by another contractual employee.

4. Er.Mohanty here relying upon certain decisions of this Court in Kartika Chandra Panda vrs. State of Orissa & ors.: 2017(II) OLR 545, Dillip Kumar Baral vrs. BPUT : 2013(II) OLR 210, and decisions of the Hon'ble Supreme Court in State of Haryana & ors. vrs. Piara Singh & Ors : AIR 1992 SC 2130 and State of Punjab and & ors. vrs. Inder Singh & ors. : AIR 1998 SC 7 contended the Hon'ble apex Court has clearly come to hold that the engagement of a person on deputation amounting to temporary absorption and such position continues until and unless it is regularly absorbed in the cadre of the Establishment. Er.Mohanty advancing his submission on the score that even in availability of any stigma and/or allegation against an employee and involving a decision of KIITS University for not extending the probation period of an employee, for the opinion of this Court

in the case of Dr.Utam Kumar Samant vrs. KIITS & ors : 2014 Supp.II OLR 852 and in disposal of Civil Appeal No.14553 of 2015 decided on 15.12.2012 in the Case of J. Jeyapaul vrs. S.R.M. University & Ors. an unreported one, contended that in the event the University involved in its mind any complain against the Petitioner following the aforesaid decision, there should have been compliance of natural justice before taking out the service of such person. Er.Mohanty taking this Court to the appointment through the Advertisement in reference to Page-25 of the Brief contended that when the University continued with the rest of the positioning, there was no reason to take out the services of the Petitioner. Er. Mohanty, here taking this Court to Annexure-15, the Resolution of the extraordinary meeting of the Executive Council of the University conducted on 11th February, 2012, particularly the Agenda Item No.7 contended that in the past the University in similar situation considering some persons continuing over two years and prescribing the eligibility Rules has decided to regularize the persons in different categories involving names of persons find place at Pages-161 & 162 of the Brief thereby regularizing at least the services of twenty-five persons in first phase and seven persons in different posts again in the second phase. Er.Mohanty, learned counsel for the Petitioner thus contended that for the nature of recruitment and for the University since following a procedure for regularization of persons on completion of two years of continuous service and specifying eligibility criteria, Petitioner since continued with the Post of Assistant Finance Officer for four years, nothing prevented the University from undertaking such exercise. Er.Mohanty also took support of some decisions of the Hon'ble Supreme Court in State of Jharkhand & ors. Vrs. Brahmputra Metalics Ltd., Ranchi & anr : 2020 SCC Online 968, Jarnail Singh & ors. Vrs. State of Punjab & ors. : 1986(3) SCC 277 and National Building Construction Corporation vrs. S.Raghunathan & ors. : (1998) 7 SCC 66.

5. In the process Er. Mohanty, learned counsel for the Petitioner restricting his prayer to prayer No.b for the time being submitted that the petition involving prayer no.b should succeed.

6. This Court makes it clear that even though there are so many parties, but however, real contesting opposite parties are Opposite Party Nos.5, 6 & 7. Filing counter affidavit the Opposite Party Nos.5, 6 & 7 in their opposition to the entertainability of the writ petition, while denying each allegations raised by the Petitioner contended that the writ petition in the present form is not maintainable for the same involves serious disputed questions of fact and such issues cannot be decided by the High Court in exercise of power under Article 226 of the Constitution of India. These Opposite Parties also alleged that the Petitioner has misrepresented the facts and there has been misjoinder of cause of action. It is contended that for the Petitioner accepting the communication of non-extension of services and for the Petitioner's challenge to such order being passed vindictively taking into account certain development in Audit side, the problem and/or development in Audit side remains unconnected with the non-extension of the Petitioner's service. It is further contended that once the Petitioner accepts

the non-extension communication without objection, he has no further scope to challenge the same. It is also contended that for the impugned order involves non-extension of contractual service, the same cannot be equated with termination and/or retrenchment of an employee. In the process it is also contended that there does not apply principle of natural justice. Looking to the nature of communication it is also contended that the terms and conditions of service also do not come to play. These Opposite Parties submitted that the averments made in paragraph no.2 do not require any response. It is contended that since the averments made in paragraph nos.3 & 4 are all matter of record, there is no response required except the Petitioner is to put strict proof thereof on the averments made in paragraph no.4. These Opposite Parties contended that since the appointment order at Annexure-4 is an indicator of time bound period of one year, not only the Petitioner misrepresented the fact but further extensions, if any, are also subject to the University's discretion. Following the condition in clause 4 of the offer of appointment and for the restrictions therein, it is contended that an employee has no vested right in claiming anything further. Taking the plea of the Petitioner on clause '6' of the offer of appointment, these Opposite Parties also contested the writ petition on the ground that Clause-6 of the offer of appointment has not been invoked in the case of the Petitioner as the Annexure-6 simply involves a non-extension of service period. Mr. Rath, learned counsel contended that the extension, if any, given are an outcome of terms of appointment under Annexure-4 and such a decision is in the complete wisdom of the University. While claiming so, these Opposite Parties have also claimed that in the meantime there is filling of such posts through an Officer deputed from the Government of Odisha. Copy of further appointment finds place at Annexure-A/6(series). These Opposite Parties however admitted that further employment in the said post is on deputation basis but however after they failed in getting a suitable candidate in a process of selection and the posting involved is however in the post of Finance Officer. These Opposite Parties contended that for the response already given up to paragraph no.16, there is no need for response to paragraph nos.7 & 8 of the writ petition. Answering the claims in paragraph no.9 these Opposite Parties claimed that the Annexure-6 cannot be treated to be a stigmatic one. While denying the claims in paragraph no.10 these Opposite Parties submitted that since the appointment of the Petitioner was under a contract vide Annexure-4 the Petitioner is bound by the same. These Opposite Parties further claimed that there is already answer to the averments made in paragraph no.11 and there is no requirement of repetition. The Opposite Parties further claimed that since the Annexure-6 is a communication of non-extension of service, the same does not amount an order of termination and thus submitted that, there is no requirement of compliance of clause 6 of the Annexure-4. On the averments in paragraph nos.13 & 14 of the writ petition, it is claimed that in the guise of such pleading the Petitioner is attempting to make out a 3rd case and also attempting to convert the writ petition into a PIL. Averments and allegation made in paragraph no.15 are claimed to be; the Petitioner is taking a dangerous step without following prescribed procedures and

since the claims therein involve disputed question of fact, the same cannot be entertained in a writ petition. These Opposite Parties denied to have any extraneous reason for non-extension of services of the Petitioner and on the other hand, contended that non-extension is purely intended to manage the accounts work of the University through a Finance Officer of the Central Government / State University of the State Government in terms of the resolution passed by the Executive Council dated 31.08.2019 and 26.06.2020 as appearing at Annexure-B/6(series). These Opposite Parties also flatly denied the allegations made by the Petitioner in paragraph nos.17 & 18. These Opposite Parties opposed the move of the Petitioner in raising unconnected issues. These Opposite Parties also claimed that there is no ouster of services of the Petitioner. Through paragraph no.30 of the counter affidavit the Opposite Parties flatly denied the averments made in paragraph nos.21 & 22 of the writ petition. These Opposite Parties refused to answer the averments made in paragraph nos.24 & 25 on the premises that the allegation of appointment of Registrar of the University was beyond the scope of writ petition.

7. In advancing his further submissions Mr. P.K. Rath, learned counsel for the contesting Opposite Parties on reiteration of all the above, summarizes his submission while admitting that the conditions of services set forth through Annexure-4 binds all the parties, attempted to submit that since the Petitioner's appointment was purely on temporary and contractual basis, the Petitioner had no right to claim continuity. Mr.P.K.Rath, learned counsel contended that Annexure-6 since involves non-extension of contractual period of the Petitioner, the services of the Petitioner cannot be treated as an ouster. Further looking to the nature of communication at Annexure-6 Mr. Rath, learned counsel for the contesting Opposite Parties also contended that for the expiry of the period of services of the Petitioner and for the refusal of the University to extend the services of the Petitioner, the services of the Petitioner comes to an automatic end. Further on the premises that the post is already filled up by way of deputation, Mr. Rath, learned counsel for the contesting Opposite Parties contended that the writ petition has no substance to be considered for a person is already appointed under deputation. Mr. Rath, learned counsel for the contesting Opposite Parties of course outside the counter averments contended that since the person under deputation has not been made as a party to the present proceeding, entertainment of the writ petition will surely affect such person already engaged under deputation against the post the Petitioner was holding earlier. Mr. Rath, learned counsel for the contesting Opposite Parties also contended that since the Petitioner has accepted the terms and conditions with open eyes, he is bound by the same. Mr. Rath, learned counsel for the contesting Opposite Parties on his claim that continuation in service while holding a contract post does not create a vested right, he at this stage also relied on two decisions of the Hon'ble apex Court vide Secretary, State of Karnataka and others Vrs. Umadevi (3) and others as reported in (2006) 4 SCC 1 and in the case of Union of India and others Vrs. N. Murugesan and others as reported in 2022(2) SCC

25. Mr. Rath, learned counsel for the contesting Opposite Parties in his further argument particularly on the score that the claim of regularization by a person can be maintained only while in service, also took reference of two decisions of the Hon'ble apex Court vide in the case of State of Rajasthan and Others Vrs. Dayalal and Others as reported in (2011) 2 SCC 429 and in the case of Management of the BARARA Co-operative Marketing-cum-Processing Society Ltd. Vrs. Workman Pratap Singh as reported in (2019) 2 SCC 743. Taking this Court to the documents at pages 31 to 115 Mr. Rath, learned counsel for the contesting Opposite Parties contended that for the Petitioner producing such large number of documents obtaining illegally, his such unauthorized conduct deems to be in violation of the provisions of the Official Secrets Act as there has been attempt for personal gain through unauthorized possession of the Official documents. Referring to the minutes of the meeting at page 155 of the brief Mr. Rath, learned counsel for the contesting Opposite Parties contended that since this did not include the Petitioner, the Petitioner cannot take aid of such resolution and the resolution was confined only to the persons whoever in service by then and continuing again named therein. Mr. Rath, learned counsel for the contesting Opposite Parties further adverting to the decision of the Council appearing at page 197 and page 200 of the brief contended that by virtue of such resolution, there is already engagement of a person in the very same post on deputation basis.

In the above circumstance, Mr. Rath, learned counsel for the contesting Opposite Parties challenged the entertainability of the writ petition and thus requested this Court for dismissing the writ petition for having no substance.

8. Considering the rival contentions of the parties and after going through the pleadings of the parties as well as material support taken therein, this Court proceeds as follows:-

(i) Undisputedly there is creation of a post of Asst. Finance Officer in the NLUO. There is also advertisement inviting applications from the interested and qualified persons to apply against such post as clearly appearing in Annexure-2. On receipt of large number of applications the University sets up a selection process and Petitioner's engagement all comes of a selection process. True initially the appointment of the Petitioner was for one year, the offer of appointment vide Annexure-4 nowhere indicates the offer was a tenure of one year. Again by the conduct of the University for extending the services of the Petitioner time and again, further the University entering into the decisions through the Committee to regularize the employees completing satisfactorily two years of service previously, this Court does not find strength in the submission of the University that the posting involved was periodic and there is automatic end of the journey of the Petitioner. It is on the other hand, looking to the nature of appointment through a selection process and that too after meeting the qualification criteria set by the University and having resolved regularizing person completed two years of continuous service; may be on previous occasion, the Petitioner has

certainly a case of legitimate expectation, the University acting in the guise of Committee resolution did not perform as a model employer. Further when the Petitioner was holding the post of Asst. Finance Officer, the Post filled in by way of deputation is Finance Officer. Both the posts since are completely different, there is grave doubt in the submission of the University that the post held by the Petitioner is already filled up by bringing a person on deputation. This Court further finds, once the appointment is based on selection and continuance of such person is dependent on his satisfactory performance, the non-continuation after so much extensions must be on a dissatisfactory note. Further, in case of no extension, such action has to be taken an action on dissatisfactory note, in such event there ought to be compliance of natural justice.

This Court here again finds, vide Annexure-4 the Petitioner is appointed being selected through a selection process and further appointed initially for one year with scope of extension and continuing subject to the decision of the University, the University accordingly accommodated the Petitioner beyond one year and vide Annexure-6 taking a decision not to give further extension. For clarity this Court here takes into account the contents in Annexure-4 as well as Annexure-6, which letters reads as follows :-

Annexure-4

"Dr. Dolly Jabbal

Registrar (I/c)

No.NLUO/ACAD/9950/16

Date :14.10.2016

Mr. Sabyasachi Mohanty

C/o-Trilochan Pradhan,

Po-Naya Bazar, At-Mahanadi Vihar,

Dist.-Cuttack, Pin - 753004,

Ph.: 09658875575

Sub: Offer of Appointment as Assistant Finance Officer at NLU Odisha

Dear Mr. Sabyasachi Mohanty,

I am pleased to inform you that on the recommendation of the Selection Committee of the interview held on 5th October, 2016 and in exercise of powers vested in him by virtue of National Law University Orissa Act, 2008, Vice-Chancellor has approved your appointment as Assistant Finance Officer on contractual basis with following terms and conditions:

The offer is being made on the following terms and conditions:

1. On acceptance of offer and upon joining duties, you will be governed by the rules of the University, as applicable, from time to time.
2. The post is offered initially for one year. The University has the rights to decide upon your continuation based on your satisfactory performance.
3. This being a residential University, you will normally be required to be on the campus premises from 9.00 a.m. to 5.00 p.m., six days a week or the time and days as may be decided by the University, as per its need.
4. Should a favorable decision be taken on your continuation, you are likely to be offered a long term employment. You and your family will also be covered under the medi-claim insurance policy as per the existing policy of the University.
5. The post of which you are being offered appointment carries a consolidated gross salary of Rs.40,000/- (Rupees forty thousand) only per month, subject to statutory deduction of TDS, Professional Tax, EPF etc.
6. Your employment with the University may be terminated without assigning any reasons at one month's notice or salary in lieu thereof and you may also have a corresponding right to terminate it at one month's notice or in payment of salary in lieu thereof.
7. This appointment is subject to the regularizations of the University as may be in force at any time.

If you find the aforesaid offer on the above stated terms and conditions acceptable, you are requested to communicate your acceptance and join duty at the earliest on or before 1st November, 2016, failing which the offer of appointment is liable to be treated as cancelled.

With best regards,

Yours sincerely."

Annexure-6

"Prof. (Dr.) Yogesh Pratap Singh Vice-Chancellor (I/c)

Date : October 17, 2020

Mr. Sabyasachi Mohanty

Assistant Finance Officer

National Law University Odisha,

Cuttack

Dear Mr. Sabyasachi Mohanty

I am directed to inform you that the competent authority has decided not to grant any further extension to you as Assistant Finance Officer. You will be

relieved from your duties on 19th October 2020 at 9 AM. You are also directed to handover charge along with all files / documents / audit reports etc. to Mr. Bibhu Prasad Kar, Assistant Registrar, NLUO on Monday, 19 October 2020 at 9 A.M.

Thank you so much for rendering services to NLUO.

We wish you all the best.

With warm regards,

Yours sincerely,

Prof. (Dr.) Yoresh Pratap Singh

Annexure-6 is issued taking a decision not to extend the services of the Petitioner. Even accepting the University's stand that it resolves to continue with the post then in 1st instance you go for fresh advertisement, this itself shows your intension of continuing with the post and once you continue with post but taking decision not to continue with person already there for so many years and even if you claim, the disengagement has no stigma then your decision at this stage cannot be without attachment of stigma even though your order doesn't reflect so. Such order without natural justice cannot be entertainable.

(ii) For the undisputed fact that the person comes on deputation joined the post of Finance Officer whereas the Petitioner was dropped from the post of Asst. Finance Officer, this Court since finds, there is nobody joined as Asst. Finance Officer a post filled in by interview process not being filled in as of now, the joining of a person in the post of Finance Officer remains innocuous, the stand of the University that there is already a person as against the Petitioner has no substance. Advertisement at Annexure-2 at Sl.No.7, the call letter at Annexure-3, the offer of appointment at Annexure-4, Extension letter at Annexure-5 and letter not extending the petitioner's services are all dealing with Asst. Finance Officer post being held by the Petitioner. Submission of petitioner that there is no filling up of the post of Asst. Finance Officer, is again fortified vide Annexure-8 at running page 117 where the University attempted to fill up the post of Finance Officer.

(iii) This Court hereinabove already recorded the statement of Mr.P.K.Rath, learned counsel appearing for the University-NLUO contrary to the stand of the University in the counter that the terms and conditions in the offer of appointment under Annexure-4 were governing the field so long as the Petitioner was continuing in such Establishment and further looking to the confirmation of the same through Annexure-5, this Court finds, in the offer of extension of contractual appointment in favour of the Petitioner, vide Annexure-5, there is clear indication that the terms and conditions of the appointment letter holds good. This Court here likes to take note of the terms and conditions applied to both the Parties, as indicated in the offer of appointment letter dated 14.10.2016, vide Annexure-4, which reads as follows :-

"The offer is being made on the following terms and conditions:

1. On acceptance of offer and upon joining duties, you will be governed by the rules of the University, as applicable, from time to time.
2. The post is offered initially for one year. The University has the rights to decide upon your continuation based on your satisfactory performance.
3. This being a residential University, you will normally be required to be on the campus premises from 9.00 a.m. to 5.00 p.m., six days a week or the time and days as may be decided by the University, as per its need.
4. Should a favorable decision be taken on your continuation, you are likely to be offered a long term employment. You and your family will also be covered under the medi-claim insurance policy as per the existing policy of the University.
5. The post of which you are being offered appointment carries a consolidated gross salary of Rs.40,000/- (Rupees forty thousand) only per month, subject to statutory deduction of TDS, Professional Tax, EPF etc.
6. Your employment with the University may be terminated without assigning any reasons at one month's notice or salary in lieu thereof and you may also have a corresponding right to terminate it at one month's notice or in payment of salary in lieu thereof.
7. This appointment is subject to the regularizations of the University as may be in force at any time."

Reading through the terms and conditions governing the field also binding on both sides, this Court finds, through Clause-6 of the terms and conditions, there is clear condition of termination of the Petitioner not only without assigning any reason but with one month's notice or salary in lieu thereof. In the circumstance, this Court finds, in the event the Employer was not interested to continue with the Petitioner, the so-called letter of non-extension of service of the Petitioner ought to have been issued strictly in terms of Clause-6 of the terms and conditions, failure of which the impugned order under Annexure-6 has no leg to stand.

(iv) This Court here takes into account the submission of Mr.P.K.Rath, learned counsel for the NLUO in his opposition on the claim of the Petitioner that for the offer of appointment allowing the Petitioner to continue in such Post giving extension after extension abruptly stopping the continuation of the Petitioner, vide Annexure-6 would be amounting to termination of the Petitioner and in violation of Clause-6 of the terms and conditions, is not correct and each individual offer of extension is amounting to a new contract, and therefore, non-extension of service of the Petitioner is neither amounting to disengagement nor there was any necessity of compliance of clause-6 of the offer of appointment, on the other hand, amounting to closure of a contract, this Court on reiteration of the observations in Paragraphs-iii again in reference to the condition at Clause-6

in the offer of appointment at Annexure-4, extension of terms and conditions of service disclosed in the appointment letter of the Petitioner being permitted to continue in the last extension of service of the Petitioner for one year with effect from 18th October, 2019, vide Annexure-5, further finding the submission of Mr. Rath, learned counsel for the NLUO insofar as Clause-6 of the service condition and continuing with such terms and conditions even in issuing the last extension of service in Annexure-5 finds, the NLUO had no other option than to undertake the exercise of non-continuation of the Petitioner only in terms of Clause-6 of the service condition, vide Annexure-4. In the above stand of the University, this Court finds, the University is not clear in its stand and there is contradicting stand. This Court finds, the order at Annexure-6 has no leg to stand in the eye of law, as it involved disengagement of an employee in the Post of Assistant Finance Officer de hors the terms and conditions, vide Annexures-4 & 5 respectively. This Court here also takes into consideration the claim of the Petitioner through his Counsel that looking to the term and condition nos. 1, 2 & 4, the Petitioner undoubtedly had an expectation of being regularized or continuance in the Post he was holding or in the minimum to continue further by way of extension. Further also based on the conduct of the University which had regularized a large number of contractual recruits after each of them completed two years of satisfactory service and since the Petitioner had already completed four years unblemished career till he was communicated with the non-extension, Petitioner's expunction is here contrary to the decision of the University decision vide Annexure-15 running page 167 of the brief. Undisputedly being satisfied with the service of the Petitioner in his first tenure after the offer of appointment being issued to the Petitioner, there was scope for issuing an extension on the offer of appointment, which even continued one more year taken place in a development in 2018 and last such extension was given by the University extending the services of the Petitioner on contractual appointment with effect from 18th October, 2019 to continue up to 17th October, 2020. For the own conduct of the NLUO, it suffers for not governing it by terms and conditions set by itself and as in the four years of continuation of service of the Petitioner at no point of time, the Petitioner has never been issued with either any displeasure note of the Employer or proceeded with any action thereof.

(v) This Court again finds, once the University decides to recruit through a regular process of selection and in the process you select a person though you are selecting on contractual basis but after allowing him to continue for multiple years, you cannot leave such employee to your mercy and there should not only be following of process of Law or Rules prevailing may be by way of terms and conditions in service but there should also be lawful reason in taking out the services of such selected person and failure of which there shall be no Job security of the employee concerned. Here in the case though this Court finds through the submission of Sri Rath, that the Job was provided to the Petitioner on contractual basis and such person was not allowed to continue on the basis of certain observation of the competent authority, argument is advanced that the

employer was not satisfied and/or continuity of such person is undesirous for the Institution, this Court here finds, the submission of Sri Rath, learned counsel that the communication of non-continuance of the Petitioner for non-stigmatic fails on its own submission. Sri Rath's submission that the communication of non-extension of employment does not amount to stigmatic termination found to be contrary to its own argument.

(vi) Petitioner as appears, left his previous job in the Choudwar Municipality on his getting selected by the University in a regularly selection process with all his future hopes and if the same is not extended, he will surely be nowhere. On the own submission of the University the Petitioner undisputedly was against in the post of Asst. Finance Officer, on declining to extend the service of the Petitioner vide Annexure-6 it attempted to fill up the post by way of advertisement. On failure of it in such attempt the University resolved without the signature of five available board members including even the Chair of the Meeting resolved to bring a person in the post of Finance Officer and certainly not in the post of Asst. Finance Officer presumably post of Asst. Finance Officer is lying vacant as of now and thus there is no difficulty in taking back the Petitioner even without disturbing the Finance Officer who again has come on deputation and to serve maximum for three years.

(vii) This Court here declines to accept the contention of Mr.P.K.Rath, learned counsel for the NLUO that the Petitioner becomes unfit to continue in service in the NLUO for attempting to file some official documents in his possession through the Writ Petition for his personal gain and since the Petitioner misconducted under the provision of the Official Secrets Act. For the nature of order already involved the Petitioner, this Court finds, none of the documents till Annexure-6 exhibit the above reason, in absence of which this Court is unable to appreciate the stand taken by the NLUO, particularly in the matter of misconduct under the provision of the Official Secrets Act. Further in the event the Petitioner had misconducted in any manner, during his continuance nothing prevented the NLUO to proceed against the Petitioner accordingly, in absence of which the above stand of the University remains unacceptable.

(viii) Taking into account the submission of both the learned counsel on the aspect of claim of the Petitioner on one hand that since there is stigma and there ought to be compliance of natural justice, accordingly non-extension of services of the Petitioner in absence of compliance of natural justice remains unjustified and the counter contentions of Mr.P.K.Rath, learned counsel for the NLUO that once there is a contractual service for specific period, the service of such employee comes to an end on expiry of such period, this Court here finds, for the conditions at Clauses-1, 2, 4 & 6, further there is repeated extension of service of the Petitioner in the event there was no requirement of continuation of the Petitioner, there ought to have been compliance of Clause-6 of the terms and conditions at Annexure-6. The post held by the Petitioner is still lying vacant. This itself shows, there is no abandonment of such post even.

(ix) Considering the submission of Er.Mohanty, learned counsel for the Petitioner in reference to Annexure-15, particularly the University in the previous instance had regularized a number of temporary service holders based on Agenda No.7 therein and the opposition of Mr.P.K.Rath, learned counsel for the NLUO that the Agenda referred to in Annexure-15 confined to the persons named therein has no place to be considered in the case of the Petitioner, this Court finds, it may be true that as per Agenda No.7 the University took decision to regularize about thirty persons in two phases those who have completed their services unblemished for two years, such a principle could have been applied in the case of the Petitioner, since the Petitioner here has already completed an unblemished service of more than three years and the Petitioner has a reasonable expectation here. Further it also makes it clear that the University in the guise of no permanent service conditions on its own employee, is applying different standards in case of different employees which cannot get approval of law. Once you set a principle that should be followed till it is replaced only by a better principle, if any. The attitude of the University in the circumstance makes it clear that the University applies different principles in case of different employees, which ought to be prohibited.

(x) It is surprise to note that such an important University does not have a codified service condition, being an University of International rapport it cannot apply different conditions at different point of time and there should be immediate attempt to have rule and/or regulation to regulate the field of engagements. For the University of this nature building career of the Lawyers in an attempt to strengthen the Judicial Institutions, Law Universities should set up exemplary principles and not to indulge in diluting tactics and working on hand made rules as already disclosed here that two offer of appointments involving non-teaching staffs vide Annexure-4 and Annexure-C/6 involved here even does not have similarity.

(xi) The Opposite Party Nos.5 to 7 in filing counter affidavit claimed that the order at Annexure-6 is a non-stigmatic one, but however in paragraph no.24 of their counter affidavit have assigned the reason of not extending the services of the Petitioner with an intention to manage the accounts work of the University through a Finance Officer from the Central Government / State University or the State Government. This Court here finds, the Opposite Parties have made it clear to find the Petitioner unsuitable or else neither there was any question to pick up a person on deputation basis from Central Government / State University or the State Government nor there was any requirement in getting a resolution through the Executive Council of the National Law University (Odisha), further there was also no necessity for going for fresh recruitment as clearly admitted by the University taking place before requisitioning the State to provide a person on deputation. It is, at this stage of the matter, this Court vetting through Annexure-B/6(series) find place at serial at page 193 of the brief involving a minutes of the 29th meeting of the Executive Council held on August 31, 2019, finds, the agenda at item No.3(d) of the resolution reads as follows :-

Sl. No.

Agenda Items

Remarks

1.

xx

xx

2.

xx

xx

3.

Items for consideration of Executive

Council

(a)

xx

xx

(b)

xx

xx

(c)

xx

xx

(d)

Advertisement for Appointment of Registrar and Finance Officer

The Council Noted the Advertisement issued for the post of Registrar and Finance Officer and requested the Vice – Chancellor to complete the appointment process at the earliest.

Here it clearly appears, the agenda meant for filling of the post of Finance Officer and certainly not Asst. Finance Officer. It is not known what was the necessity of taking out the services of the Asst. Finance Officer. The University's relying on such minutes since involve appointment of the Finance Officer, has no relevancy to the case at hand.

Similarly the agenda at Sl.No.5 of the minutes of the meeting dated 26th June,

2020 reads as follows:-

Sl. No.

Agenda Items

Resolutions

1.

xx

xx

2.

xx

xx

3.

xx

xx

4.

xx

Xx

5.

Any other Item with the
permission of the Chair

The Vice-Chancellor informed the
council that NLU Odisha is
ranked 9th among NLUs and 14th
Place in Law Schools of India
ranking in the National
Institutional Ranking
Framework (NIRF), MHRD,
Government of India.

The Council appreciated the
collective efforts of the VC,
Faculty, Students and Staff.

2. The Advocate General raised

the issue of appointment of a Regular Registrar and Finance Officer of the University as no one found suitable in the last selection process.

The Council resolved that as far as office of the Registrar is concerned, a person from academic will be more suited. Therefore, a faculty member from the University may discharge the function of the Registrar.

Regarding Finance Officer, the Council resolved that University will write letter to Government so that a Finance Officer from a Central / State University or State Government may be appointed on

deputation basis.

Here this Court finds, requisition is again for the post of Finance Officer and not Asst. Finance Officer and such agenda came under any other item in course of meeting itself.

9. This Court here finds, even though this meeting was attended by 10 respective invitees and Hon'ble Chair as clearly borne from page 200 of the brief, there was no signature of five attendees including the Hon'ble Chair in the meeting. There arises a serious doubt in the validity of such resolution, as a consequence also in the consequential appointment of the Finance Officer on deputation basis. Above clearly establishes, there is no agenda and resolution in the eye of law. This observation, however, confines as against the claim of the University that there is valid replacement on non-extension of service of the Petitioner. It is made clear that the Petitioner was holding the post of Asst. Finance Officer whereas the Post filled on deputation basis is Finance Officer. These Opposite Parties even though filed the resolution supporting their claim and correspondences requesting the competent authority for deputing a person, but however, there is no document to establish that if name of any such person has been recommended for being appointed under deputation basis, even there is no pleading to this effect except these Opposite Parties claimed that the person so engaged is on deputation basis. This Court again finds through paragraph no.26 of the counter affidavit that the decision of the competent authority was for a larger interest of the University. It is difficult to appreciate, what is that larger interest in not continuing with the Petitioner and in such event the ouster of the Petitioner certainly a stigmatic. Such communication without compliance of natural justice is not maintainable.

10. This Court considering the decisions available and going through the same finds as follows:-

In the case between Manish Gupta & Anr. Etc. Versus President, Jan Bhagidari Samiti and others Etc. Etc. involving Civil Appeal Nos.3084-3088 of 2022 the Hon'ble apex Court taking into account the nature of appoint and that too selection based on duly constituted selection process and on the proposition one

ad.hoc employee cannot be replaced by another ad.hoc employee even though appointment was for a specific period and through para 12 and 13 held as follows:-

"12. A perusal of the advertisement dated 24th June, 2016 issued by the Principal, Government Kamla Raja Girls Post Graduate Autonomous College, Gwalior, which is at Annexure P-2 of the Appeal Paper Book and the advertisement dated 2nd July, 2016 issued by the Principal, SMS Government Model Science College, Gwalior, M.P., which is at Annexure P-3 of the Appeal Paper Book, would show that the appointments were to be made after the candidates had gone through due selection procedure. Though Shri Nataraj, learned ASG has strenuously urged that the appointments of the appellants were as guest lecturers and not as ad hoc employees, from the nature of the advertisements, it could clearly be seen that the appellants were appointed on ad hoc basis. It is a settled principle of law that an ad hoc employee cannot be replaced by another ad hoc employee and he can be replaced only by another candidate who is regularly appointed by following a regular procedure prescribed. Reliance in this respect can be placed on the judgment of this Court in the case of Rattan Lal and others vs. State of Haryana and others and on the order of this Court in the case of Hargurpratap Singh vs. State of Punjab and others.

13. In that view of the matter, we do not find that an error was committed by the learned single judge of the High Court by directing the writ petitioners to continue to work on their respective posts till regular selections are made. We, however, find that the direction issued by the learned single judge of the High Court that the writ petitioners would be entitled to get the salary in accordance with the UGC circular is not sustainable. The advertisements themselves clearly provided that the selected candidates would be paid the honorarium to be determined by the said Committee."

This Court finds, above decisions squarely fits to the case of the Petitioner who has been substituted by a deputationist as per the claim of the contesting Opposite Parties.

11. In the case between Satwati Deswal Versus State of Hariyana reported in (2010) 1 SCC 126 the Hon'ble apex Court dealing with both the points as to maintainability of the writ petition for having the provision of appeal and also if there can be termination of an employee without following process of natural justice through paragraph nos.3 to 7 has come to hold as follows :-

"3. In our view, this appeal must succeed on a very short point. Before we take up the ground on which this appeal should be allowed, we may state the relevant facts leading to the filing of this appeal, which are as follows: the appellant [MA, BEd, MSc (Computer)] was appointed as a lecturer in 2003 in a recognised school in the State of Haryana and was subsequently promoted to the post of Principal on account of her seniority. Her appointment and promotion were duly approved by the authorities concerned, but by a non-speaking and unreasoned

order dated 11-9-2006, her services were terminated by the Manager of the School, namely, Respondent 5 herein.

4. Admittedly, in this case no show-cause notice was issued to her nor was the order of termination passed by initiating any departmental proceeding after giving opportunity of hearing to the appellant. This order of termination was challenged by the appellant by way of a writ petition before the High Court, which was dismissed by it on the ground that the appellant had an alternative remedy to file an appeal under the rules before the appellate authority against the order of termination.

5. In our view, the High Court had fallen in grave error in rejecting the writ petition on the aforesaid ground. First, such an order of termination was passed without issuing any show-cause notice to the appellant and without initiating any disciplinary proceedings by the authorities and without affording any opportunity of hearing. It is well settled that a writ petition can be held to be maintainable even if an alternative remedy is available to an aggrieved party where the court or the tribunal lacks inherent jurisdiction or for enforcement of a fundamental right; or if there had been a violation of a principle of natural justice; or where vires of the Act were in question.

6. The aforesaid exceptions recognised by this Court were taken note of by this Court in *Collector of Customs v. Ramchand Sobhraj Wadhwani* [AIR 1961 SC 1506] in which the Constitution Bench laid down the principles of the above exceptions when writ application could be entertained even if an alternative remedy was available to an aggrieved party. The same view was expressed by this Court in *L.K. Verma v. HMT Ltd.* [(2006) 2 SCC 269 : 2006 SCC (L&S) 278 : AIR 2006 SC 975] and *M.P. State Agro Industries Development Corpn. Ltd. v. Jahan Khan* [(2007) 10 SCC 88 : (2008) 1 SCC (L&S) 9 : AIR 2007 SC 3153] .

7. Such being the position and in view of the admitted fact in this case that before termination of the services of the appellant, no disciplinary proceeding was initiated nor was any opportunity of hearing given to the appellant. It is clear from the record that the order of termination was passed without initiating any disciplinary proceedings and without affording any opportunity of hearing to the appellant. In that view of the matter, we are of the view that the writ petition was maintainable in law and the High Court was in error in holding that in view of availability of alternative remedy to challenge the order of termination, the writ petition was not maintainable in law."

12. In the oldest decision of the Hon'ble apex Court in the case of *State of Haryana and others Versus Piara Singh and others* reported in (1992) 4 SCC 118 the Hon'ble apex Court dealing with the proposition of an ad.hoc or temporary employee should not be replaced by another ad.hoc or temporary employee and such person must be replaced only by a regularly selected employee in para 46 the apex Court came to observe as follows:-

"46. Secondly, an ad hoc or temporary employee should not be replaced by

another ad hoc or temporary employee; he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority.”

Similarly on the issue of regularization of temporary employee when continued for long period the Hon’ble apex Court through para 36 & 49 in the same judgment came to observe as follows:-

“36. The High Court has also directed that all those employees who fall within the definition of ‘workmen’ contained in the Industrial Disputes Act will also be entitled to regularisation on par with the work-charged employees in whose case it is directed that they should be regularised on completing five years of service in Punjab and four years of service in Haryana. This direction is given in favour of those casual labour and daily wagers who fall within the definition of workmen. Insofar as work-charged employees, daily wage workers and casual labourers who do not fall within the definition of workmen are concerned, the High Court had directed their regularisation on completion of one year's service. We find this direction as untenable as the direction in the case of ad hoc/temporary employees. Insofar as the persons belonging to the above categories and who fall within the definition of workmen are concerned, the terms in which the direction has been given by the High Court cannot be sustained. While we agree that persons belonging to these categories continuing over a number of years have a right to claim regularisation and the authorities are under an obligation to consider their case for regularisation in a fair manner, keeping in view the principles enunciated by this Court, the blanket direction given cannot be sustained. We need not, however, pursue this discussion in view of the orders of the Government of Haryana contained in the letter dated April 6, 1990 which provide for regularisation of these persons on completion of ten years. We shall presently notice the contents of the said letter. In view of the same, no further directions are called for at this stage. The Government of Punjab, of course, does not appear to have issued any such orders governing these categories. Accordingly, there shall be a direction to the Government of Punjab to verify the vacancy position in the categories of daily wagers and casual labour and frame a scheme of absorption in a fair and just manner providing for regularisation of these persons, having regard to their length of service and other relevant conditions. As many persons as possible shall be absorbed. The scheme shall be framed within six months from today.

49. If for any reason, an ad hoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularisation provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State.”

13. Coming back to the case at hand this Court here finds, there is no dispute that the Petitioner got his selection through a selection process involving an advertisement and continued for nearly four years before he was not granted with extension. On its own submission of the University after order not granting

extension of services of the Petitioner it went for recruitment of Finance Officer and their failure in such attempt it has decided to bring a person on deputation to hold post of Finance Officer that too for three years again a temporary filling up post, this Court here finds, there is in fact no filling of the post of Asst. Finance Officer and even assuming that the University managed the said post through Finance Officer not only both the posts are different but the reengagement again by way of temporary filling up and in the circumstance above decision squarely applies to the case of the Petitioner.

14. In the case of Hargurpratap Singh Versus State of Punjab and others as reported in (2007) 13 SCC 292 dealing again with a case there cannot be substitution of an ad.hoc employee by way of another ad.hoc employee through paragraph 3 the Hon'ble apex Court came to observe as follows:-

"3. We have carefully looked into the judgment of the High Court and other pleadings that have been put forth before this Court. It is clear that though the appellants may not be entitled to regular appointment as such it cannot be said that they will not be entitled to the minimum of the pay scale nor that they should not be continued till regular incumbents are appointed. The course adopted by the High Court is to displace one ad hoc arrangement by another ad hoc arrangement which is not at all appropriate for these persons who have gained experience which will be more beneficial and useful to the colleges concerned rather than to appoint persons afresh on ad hoc basis. Therefore, we set aside the orders made by the High Court to the extent the same deny the claim of the appellants of minimum pay scale and continuation in service till regular incumbents are appointed. We direct that they shall be continued in service till regular appointments are made on minimum of the pay scale. The appeals shall stand allowed in part accordingly."

15. This Court here takes into account the decisions cited by Sri Rath, learned counsel appearing for the University and observe as follows:-

In the case of Management of the Barara Co-operative Marketing-cum-processing Society Ltd. Versus Workman Pratap Singh reported in 2019(2) SCC 743, this Court finds, it is a case of Workers claiming to have been retrenchment illegally and benefit of Section 25 H vis-à-vis regularization and has no application to the case at hand. Further the Petitioner since is not pressing the issue of regularization for his presently out of service and keeps such issue to be raised in future in the event there is such necessity, this Court finds, this decision has no application at all. The other decision cited by the University in the case between The State of Rajasthan & Ors. Versus Dayalal and others reported in (2011) 2 SCC 429 here is a case deals with claim of regularization by a set of employees even not recruited in regular process by the Govt. and requiring the Hon'ble apex Court setting further compliance of condition in such contingency, the case at hand does not involve such contingency as the claim is made by a person selected in a duly recruited process based on advertisement and entering into a fair competition. Thus decision does not fit to the case at hand. The third

decision is in a case between the Union of India & Ors. Versus N. Murugesan and others reported in (2022) 2 SCC 25 this is a case involving purely contractual employment for five years, a tenure appointment and after end of tenure employee claim for extension and also regularization which did not come out of the advertisement. But in the case at hand there was appointment initially for one year but not only there was extension, there was even scope for extension and / or continuation as in the same advertisement several have been regularized in the meantime.

16. The 4th case the Opposite Parties relied on is in the case of Secretary, the State of Karnataka and others Versus Umadevi and other as reported in (2006) 4 SCC 44, this is purely a case involving claim of regularization of persons involving backdoor engagements and has no application to the case at hand at all considering the case at hand does not involve a case of backdoor employee.

17. In the above background of the case and legal position on the subject narrated herein above, this Court has no hesitation to declare the impugned order vide Annexure-6 remains bad in the eye of law. As a consequence while setting aside the order at Annexure-6, this Court directs the University to treat the Petitioner deemed to be continuing in the post of Assistant Finance Officer in his service uninterrupted. For there is no clarity even during course of hearing on the status of the Petitioner after the order vide Annexure-6 is passed, this Court makes the Petitioner entitled to 50% of his drawing taking into account his last pay drawn towards back wages, which be counted and paid to the Petitioner at least within a period of one month. For illegal taking out the services of the Petitioner, the Petitioner shall also be entitled to interest on back wages at least at the rate of 5% per annum all through. If back wages and interest together are not paid to the Petitioner within a period of one month of this judgment, he shall be entitled to interest at the rate of 8% per annum from the date of expiry of one month of the judgment till it is released in favour of the Petitioner.

18. The writ petition succeeds, but in the circumstances, there is no order as to costs.

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