

(2012) 02 P&H CK 0281

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 11600 of 2010 (O and M)

Subhash Chander and others

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 03-02-2012

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (2012) 02 P&H CK 0281

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : R.K. Malik, with Mr. Rajesh Bansal, for the Appellant; Kshitij Sharma, Assistant Advocate General, Haryana and Mr. S.C. Sibal with Mr. V.S. Rana, for the Respondent

Judgement

K. Kannan, J.—The writ petition seeks for a mandamus to allow the petitioners to continue as Teachers Associates (Guest Faculty Lecturers) till regular appointments are made. They have also sought for quashing of the notification issued on 30.06.2010 calling for applications from persons for appointments as Teaching Associates for the session 2010-11. The ground of attack principally is that the petitioners were already fully qualified to hold the posts as Teaching Associates and although they were recruited under a contract for a particular period, the petitioners' services cannot be dispensed with only for the purpose of enabling the University to appoint a fresh batch of persons again on contract basis. According to the petitioners, they are entitled to continue till they were replaced by regular appointments made by the University. The contentions of the petitioners are resisted by the University on the ground that a writ of mandamus cannot lie for the benefit of persons, who did not have their tenure of service guaranteed otherwise than under the contractual terms and the persons, who had secured appointments for a particular period, cannot demand for their continuation beyond that period. It is also contended that a fresh notification imposed new qualifications and consequently, the petitioners cannot allow the previous appointments to continue and deny to the University its right to

determine the qualifications for the prospective employees.

2. As regards the contention that a contractual employee cannot obtain any right to continue in appointment beyond the contract period and that a writ cannot lie, the learned senior counsel appearing on behalf of the respondents refers me to several decisions of the Hon''ble Supreme Court and of this Court, which I shall only reproduce only for the purpose of fully addressing the arguments advanced before me. They are: Ravinder Singh and others v. State of Haryana and others, 2008(3) R.S.J. 1; Vidyavardhaka Sangha and another v. Y.D. Deshpande and others, 2006(12) S.C.C. 482; and India Literacy Board and others v. Veena Chaturvedi and others, 2005(2) R.S.J. 384.

3. All these decisions have come about in the context of persons seeking to challenge the order of terminations and seeking for continuation of their duties. In situations where it is not secured as a civil service guaranteed under Article 311 of the Constitution or by any specific rules or enactments guaranteeing a tenure of employment, the Courts have held that the mandamus cannot lie to secure a relief larger than what a contract actually stipulates. The situation in this case addresses a new dimension which is anchored on a fairness principle that a public authority shall not adopt practices which are arbitrary or unfair. It is in a way an attempt at balancing the interest of an employee and the autonomy a public authority to obtain a fairness quotient in its recruitment policies. It is in another sense an extension of an understanding in the labour jurisprudence that insulates against unfair labour practice. Service Law is guided by its own principles which are at all times not congruent to labour jurisprudence but still the Hon''ble Supreme Court itself expressed how the post WTO regime has made even the services of an employee vulnerable through hire and fire policy. The Hon''ble Supreme Court has expressed in Harjinder Singh Vs. Punjab State Warehousing Corporation, The Hon''ble Supreme Court has expressed the present situation in these words:-

30. Of late, there has been a visible shift in the Courts'' approach in dealing with the cases involving the interpretation of social welfare legislations. The attractive mantras of globalisation and liberalisation are fast becoming the *raison d'etre* of the judicial process and an impression has been created that the constitutional Courts are no longer sympathetic towards the plight of industrial and unorganised workers. In large number of cases like the present one, relief has been denied to the employees falling in the category of workmen, who are illegally retrenched from service by creating by-lanes and side-lanes in the jurisprudence developed by this Court in three decades. The stock plea raised by the public employer in such cases is that the initial employment/engagement of the workman/employee was contrary to some or the other statute or that reinstatement of the workman will put unbearable burden on the financial health of the establishment. The Courts have readily accepted such plea unmindful of the accountability of the wrong doer and indirectly punished the tiny beneficiary of the wrong ignoring the fact that he may have continued in the employment for

years together and that micro wages earned by him may be the only source of his livelihood.

4. This Court has, over a period of time, attempted to temper the rigors of contract that could make vulnerable the employees' status by a prospect of being jettisoned unjustly, even when the compulsions for providing employment persisted with the public authority. The judicial approaches have gone to protect the employees in such situations at least to the extent of ensuring that a public authority that wants to rid itself of the temporary employees and which would seek for enforcement of the contractual conditions do not again resort to temporary employments and put a fresh batch of recruits also to similar conditions. In other words, the approach is that a contract of employment cannot come to an end, merely because it was an employment that does not obtain a security of tenure through any particular statutory provisions or rules and an employee cannot lose his employment so long as a regular recruitment process for permanent posts is not undertaken. If the petitioners have a grievance that a fresh appointment process which has been started by the University is also for a contractual employment, the petitioners surely have a grievance that must obtain succor in the portal of the Courts. This is judicially enunciated law guided by principles of equity and fair play. But equity can exist only so long as it does not conflict with statutory provisions under the law. If a fresh contract contemplated is to secure better talent with higher qualifications, a contractual employee, whose contract comes to an end, cannot dictate to an employer that he must allow his human resources potential on status quo-ist qualifications. The employer and particularly a University will always have an autonomy to decide on what is best for improving its academia. If, therefore, fresh notification sets out additional qualifications as minimum eligibility condition for recruitment, the contractual employees whose contracts come to an end could at best vie for selection in the fresh recruitment process if they fulfill such additional qualifications given. They cannot ask for a carte blanche that the fresh recruitment of contractual employees itself must stop.

5. In this case, the learned counsel appearing on behalf of the respondents points out to the additional qualifications which are necessary vis-a-vis the previous qualifications under which the petitioners were working. They are as follows:-

Existing

Amended

Good academic record with at least 55% of the marks or an equivalent grade of B in the 7 point scale with latter grades O, A, B, C, D, E & F at the Master's degree level, in the relevant subject from an Indian University, or an equivalent degree from a Foreign University.

NET shall remain the compulsory requirement for appointment as Lecture of those holding a postgraduate degree. Candidates having Ph.D. degree in the

concerned subject are, however, exempted from clearing NET both for PG level & UG level teaching. Those having shall be exempted from clearing NET for UG level teaching only.

No change

NET/SLET shall remain the minimum eligibility condition for recruitment and appointment of Lecturers in Universities/Colleges/Institution. Provided, however, that candidates who are or have been awarded Ph.D. degree in compliance of the University Grants Commission (minimum standards and procedure for award of Ph.D. degree), Regulation 2009, shall be exempted from the requirement of the minimum eligibility condition of NET/SLET for recruitment and appointment as Assistant Professor for equivalent positions in Universities/Colleges/Institutions. Provided further that, the candidates who have acquired Ph.D. upto 31st May, 2009 shall also be exempted from the requirement of the minimum eligibility condition of NET/SLET for recruitment and appointment to the posts of Lecturers or equivalent positions in Universities/Colleges/Institutions. Provided further that, those candidates who have been enrolled for Ph.D. upto 31st May, 2009 shall become eligible for exemption from the requirement of the minimum eligibility condition of NET/SLET for recruitment and appointment to the posts of Lecturers or equivalent positions in Universities/Colleges/Institutions only on acquisition of Ph.D. degree.

NET shall not be required for such Master's programmes in disciplines for which there is no NET."

For determining good academic record, a candidate should either have average of 55% marks in two of the three examinations (not below Matric or equivalent) prior to Master's degree or 50% marks in each of these two examinations separately The following relaxation will, however, operate:

i).

ii).

or

iii).

NOTE

1.

2.

6. The counsel appearing on behalf of the petitioners responds to these contentions by stating that the petitioners also fulfill the additional qualifications. It is for them to apply and if they fulfill the eligibility criteria, they shall also be considered along with other candidates. The mandamus, as sought for, shall not become possible in view of the additional qualifications mentioned but the petitioners are surely entitled for consideration for appointment in the order of

merit that the fresh selection process would bring.

7. The learned senior counsel appearing on behalf of the petitioners makes a plea that they did not apply for the posts since they had sought an intervention of this Court during the writ petition. The petitioners are at liberty to make the application within two weeks from the date of receipt of copy of the order and the same shall also be considered along with other applications received previously in response to the previous advertisement, if the respondents proceed with selection on the basis of impugned notification. On the other hand, if the respondents shall issue a fresh recruitment advertisement for the year 2012-13, it is needless to state that the petitioners are also entitled to apply. The fact that the posts were left unfilled cannot give to the petitioners priority of consideration even without making an application. With these observations, the writ petition is disposed off.