

(1995) 05 DEL CK 0005

In the Delhi High Court

Case No : Civil Writ Petition No. 4420 of 1992

Sumita Sarkar

APPELLANT

Vs

Principal, Kalindi College and Another

RESPONDENT

Date of Decision : 01-05-1995

Acts Referred:

Citation : (1995) 3 AD 53 : (1995) 59 DLT 676 : (1995) 34 DRJ 389 : (1995) LabIC 373 : (1996) 1 LLJ 753

Hon'ble Judges : S.D. Pandit, J;P.K. Bahri, J

Bench : Division Bench

Advocate : N. Amaresh and B.S. Nanda, for the Appellant;

Judgement

P.K. Bahri, J.

(1) In this writ petition, the petitioner has sought quashment of the order of termination of the petitioner as part-time Lecturer/Guest Lecturer in music and for mandamus requiring the respondent to appoint the petitioner as lecturer in music on a regular basis.

(2) The facts leading to the filing of the present petition, in brief, are that Kalindi College is affiliated to Delhi University and is aided by U.G.C. and is governed by the rules and regulations pertaining to the Delhi University. The petitioner was appointed as part-time lecturer in music on adhoc basis at the stipend of Rs.500.00 per mensem initially and the same was increased to Rs.1,000.00 per mensem and thereafter to Rs.1,500.00 per mensem. The petitioner continued to be given part-time/adhoc appointment for specific periods with break of certain days and some time vacations in the college from 30th January 1987 till her services were terminated on 29th September 1992. The contention of the petitioner is that she had been working, may be on temporary/adhoc basis, but as she has put in about more than 5 1/2 years of service, she was entitled to be regularised and instead of regularising her in the regular post, her services had been terminated without any basis without holding any enquiry or disciplinary

proceedings.

(3) In the counter affidavits filed on behalf of the college, it has been mentioned that there is only one regular post of music teacher which already stands filled in on regular basis and the University could agree to creation of a new post only if in the new subject there are admitted 30 students and in view of the work load of the music classes in the college decreasing day by day, it has not been possible for the college to recommend to the University for creation of any second regular post of music teacher. It is further stated that as the work load had dwindled over the years, the services of the petitioner could not be utilised even on part-time basis and ultimately the petitioner was required to work as a guest on certain days on payment but since 1992, it has become impossible to have any work performed by the petitioner and all the classes in music can be easily taken by the regular teacher in music. So, it is averred that the work load in the college does not justify the continuation of the petitioner as part-time/ adhoc music lecturer or even as guest lecturer. It is pointed out that the petitioner was never selected for any regular post of music teacher. It is also averred that in accordance with the ordinances and statutes of the University, whenever any appointment is required to be made in the college on the regular basis, the post is advertised and the appointment is made on the basis of the recommendations of the duly constituted Selection Committee. In view of the fact that no second post of lecturer in music is available in the college, so question of making any appointment on regular basis does not arise.

(4) From the facts, it is evident that the petitioner has worked on some occasions as a part- time lecturer purely on temporary or adhoc basis without her being selected by any Selection Committee and the petitioner has worked on part- time basis for some years with certain breaks. In the additional affidavits filed by the Principal of the college, it has come out that the number of students who took admission in the first year during the last about 10 years is as under:-

1984-85	11	1985-86	14	1986-87	12	1987-88	7	1988-89	12	1989-90	9	1990-91
9	1991-92	5	1992-93	5								

(5) So, keeping in view the dwindling figure of the students taking admission in this particular subject of music, the respondents, have decided not to utilise the part-time services of the petitioner.

(6) This Court is not to assess the requirement of the teachers in the particular college. Keeping in view the facts, as have come out from the affidavits of the Principal of the College, it cannot be said that respondents were unjustified in any manner in dispensing with the services of the petitioner which were only being used as part-time music lecturer and later on as part-time guest lecturer. But, unfortunately for the petitioner, the work load in the college does not justify even continuation of the petitioner as part-time lecturer or guest lecturer. The number of students taking admission has dwindled to only 5 in 1992-93 and again 5 in 1993-94. It is not possible to countenance the contention of learned

counsel for the petitioner that the work load was same in this particular music subject when the petitioner's services were being utilised as part- time or adhoc music lecturer. When the number of students taking admission has dwindled to 5 .each in the preceding two years, it is not correct to say that the work load has not dwindled since the petitioner's services were being utilised as part- time/ adhoc lecturer.

(7) Counsel for the petitioner has made reference to Karnataka State Private College Stop-Gap Lecturers Association Vs. State of Karnataka and Others, . The question which arose before the Supreme Court in this case was that the teachers were appointed temporarily for three months or less by privately managed degree colleges receiving cent per cent grants-in-aid, controlled administratively and financially by the Education Department of the State of Karnataka. They have been working for years with a break of a day or two every three months. The question arose for their regularisation. The Supreme Court gave directions that services of such temporary teachers, who had worked as such for three years including the break, shall not be terminated and they shall be absorbed as and when regular vacancies arise.

(8) We need not refer to other directions but the directions given in that particular case, in our view, could not be given in the present case where the facts are totally different. In the aforesaid case, before the Supreme Court there was a normal work of lecturers which was being performed and there was no plea taken that the work load has become less and thus the teachers could not be given regular employments. That was a sheer case of exploitation of the teachers who were doing regular work of teachers but were being kept temporary for years together.

(9) Such is not the case here. In the present case, there is no additional post of regular music teacher available with the college. When the work justified, the services of the petitioner were used as temporary/adhoc lecturer but when the work load dwindled, the services of the petitioner came to be terminated. It is unfortunate that petitioner has given in long years of service to the college in temporary/adhoc capacity but if the work load does not justify creation of any regular post or of keeping even part-time lecturer, it would be too much to say that the mandamus should be issued to the college to create a post and to regularise the petitioner in that post or to keep the petitioner as a temporary or adhoc lecturer even though there is no work available to be given to the petitioner.

(10) In a judgment given in case of State of Haryana and others Vs. Piara Singh and others etc. etc., , the Supreme Court has, in para 43, laid down that the normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an adhoc or temporary appointment to be made. In such a situation, efforts should always be to replace such an adhoc/ temporary employee by a regularly selected employee as early as possible. Such a temporary employee may also compete Along with others for

such regular selection/ appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate. It is also laid down that an adhoc or temporary employee should not be replaced by another adhoc or temporary employee and he must be replaced only by a regularly selected employee. It was also laid down that if for any reason the adhoc/ temporary employee continued for a fairly long time, the authorities must consider his case for regularisation provided he is eligible and qualified according to the rules and his service record is satisfactory. This case was dealing with the work charged employees and other casual workers & the Supreme Court required the Scheme to be prepared for regularisation of such employees.

(11) But in the present case, we are faced with a situation where work load available in the college in this particular subject of music does not justify continuation of even temporary or adhoc lecturer, what to say of creation of a regular post for being filled in by regular employee.

(12) In *Delhi Development Horticulture Employees' Union Vs. Delhi Administration, Delhi and others*, , the Supreme Court had held that this pernicious practice of having back door entry to the government employment in violation of the rules and the procedure laid down by the Employment Exchange Act has not to be given a judicial approval. So, mere fact of persons working for 240 days or more would not itself be sufficient to give them regular employment. It was also made clear that other injurious effect of indiscriminate regularisation has been that many of the agencies have stopped undertaking casual or temporary works though they are urgent and essential, for fear that if those who are employed on such works are required to be continued for 240 or more days they have to be absorbed as regular employees, although the works are time-bound and there is no need of the workmen beyond the completion of the works. In this way, the public interests are thus jeopardised.

(13) So, it cannot be said that if an employee has put in 240 days service, such an employee must be regularised. Facts and circumstances of each case have to be examined in order to determine whether an employee who has put in more than 240 days in a particular organisation is liable to be continued or liable to be regularised.

(14) Keeping in view the facts of the present case, we are unable to agree with the contention of the learned counsel for the petitioner that the petitioner is entitled to have any regular employment as music lecturer or is entitled to continue to work as lecturer on temporary or adhoc basis when we find that the work load in the college does not justify such a course.

(15) The petitioner was very well aware when the petitioner was continuing to work as adhoc or temporary lecturer that she is being continued only because there was some additional work load available which could not be coped with by the regular lecturer and if the work was not to increase and was to dwindle, her services were liable to become superfluous in the college. It is evident that in

case the work load had increased from year to year, which could have justified creation of another regular post of music teacher, then it could be said that the respondent should make efforts to get created another post of regular lecturer and fill the same in accordance with the rules and the petitioner could have also competed with the others for being selected for such a regular post.

(16) In the present case, it is not possible to give any such directions to the respondents as the work load is not enough to continue even the temporary lecturer, what to say of creating any regular second post of music lecturer in this college.

(17) In view of the above discussion, we find no merit in this petition which we hereby dismiss but in view of the peculiar facts, we leave the parties to bear their own costs. In case in future the work load increases and the respondent feels the necessity to employ any part-time lecturer, the respondent shall first give the offer to the petitioner in this connection.