

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No. 665/2008**

% *Judgment reserved on:05.09.2012*

Judgment delivered on:31.10.2012

P.D.SINGH

..... Petitioner

Through: Mr. Robin R. David, Mr. Febin Mathew and Mr.Chittranshul Sinha, Advocates.

versus

UOI & ORS

..... Respondents

Through: Ms. Jasmine Ahmed, Advocate for Respondents No. 1 and 3.
Mr. Prashant Kumar and
Mr. Mirza Javed Beg for
Mr. S.C. Dhanda, Advocate for
Respondent No.2.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Vide the instant petition, the petitioner is seeking following reliefs:-

“1. Issue a Writ of Certiorari quashing the termination order dated 07.11.2007 as being illegal and contrary to the law of the land.

2. Issue a Writ of Certiorari quashing the advertisement dated 08.01.2008 whereby the post of Research Officer has been advertised for a temporary appointment and any proceedings thereto.

3. Issue a writ of mandamus directing the Respondents to reinstate the petitioner with back wages and all other consequential benefits including continuity of service.”

2. Brief facts of the case are that in 1993 respondent No.3, i.e., Dr. Ambedkar Foundation had set up Dr. Ambedkar Chair at the Jawahar Lal University so as to provide for a centre of learning and research on the issues concerning the socio-economic and cultural life of Scheduled Castes, Scheduled Tribes, Minorities and other Backward Classes of the society. Accordingly, on 10.07.1995 Prof. Nandu Ram was appointed as Professor in the Dr. Ambedkar Chair in the Centre for the Study of Social Systems, School of Social Science for a period of five years. The Foundation introduced a revised scheme of Dr. Ambedkar Chair in the University by its letter dated 10.09.1998. As per the revised scheme, the Chair had the following four posts, viz., Professor-1, Stenographer-1, Research Professor-1 and Peon-1.

3. The aforesaid posts were permanent and the persons working against each post were to be treated at par with other regular staff in the University for all purposes. Relevant portion of the same is reproduced as under:-

“4. Staffing of the Chairs

To carry out the above mentioned objectives and to discharge the functions assigned to them, each chair set up in different Universities/educational institution will have the following staff:-

<i>Sl. No.</i>	<i>Name of the post</i>	<i>No. of posts</i>	<i>Pay Scale</i>
<i>1.</i>	<i>Professor(Full time Professor, equivalent</i>	<i>One</i>	<i>Rs.14300-18300/- (Revised)</i>

	<i>to Professor of the University)</i>		<i>Pre-revised Rs.4500-5700</i>
2.	<i>Stenographer (Grade 'C')</i>	<i>One</i>	<i>Rs.5500-9000 (Revised) Pre-revised Rs.1640-2900</i>
3.	<i>Research Officer(in the rank and pay equivalent to Lecturer in University)</i>	<i>One</i>	<i>Rs.8000-13500 (Revised) Pre-revised Rs.2200-4000</i>
4.	<i>Peon</i>	<i>One</i>	<i>Rs.2550-3200 (Revised) Pre-revised Rs.750-940</i>

Against each of the above referred posts persons shall be recruited in accordance with the Statutes, Rules and Regulations followed by the concerned Universities/Educational Institutions in this regard keeping in view the conditions stipulated under the Memorandum of Association entered between Dr. Ambedkar Foundation and the concerned University/Institution. The posts of Professor, Research Officer, Stenographer and Peon will be permanent and hence the persons working against each post will be treated on par with other regular staff in the University/Educational Institution for all purpose.

5. Appointment of Staff

.....

a)

b) **Research Officer**

A Research Officer in the rank and scale of Lecturer to University shall be recruited and appointed by

following the same procedure which is applicable for recruitment to the post of Lecturer in an Indian University. All the terms and conditions applicable in service matters to Lectures in the University shall also be applicable to Research Officer. The Research Officer shall function under overall supervision of the Professor of the Chair.”

4. On 13.08.1999, the Selection Committee recommended the petitioner to be appointed against the post of Research Officer under the Chair after taking an interview. Thereafter, on 16.09.1999 the petitioner was appointed temporarily against the post of Research Officer for a period of one year. During the course of his employment the petitioner was given as many as fifteen extensions and three increments from November, 2000 to November, 2007. However, by its office order dated 07.11.2007, the services of the petitioner were terminated by the University.

5. Being aggrieved, the petitioner made a representation dated 30.11.2007 which reads as under:-

“Now, the university has terminated our services probably on the plea that the MOU has not been signed. At the same time, the university has not closed down the Chair or kept it in suspended animation. The Chair and the Chair Professor remains as usual, but the other staff of the Chair, the university says, shall not be appointed. I fail to understand this lack of initiative on the part of the Chair Professor and the university regarding the MOU. I would also like to inform you that the steno-typist of the Chair had already left the job in May 2007, therefore, at present (i.e. w.e.f. 1st December 2007) there is no staff working in the Chair. In view of the above, I request you to kindly look into these matters.”

6. In response thereto, vide communication dated 07.01.2008, the Member Secretary of the Dr. Ambedkar Foundation sought clarifications from the Vice Chancellor of the Jawaharlal University which is reproduced as under:-

“3. As per records of the Foundation, the staff of the Chair had been appointed in the pay scales prescribed by the Foundation for Research Officer, Stenographer Grade ‘C’ and Peon. They were also given annual increments as per their pay scales till the year 2005-06. But their annual increments have been stopped for the last one years without giving them any reason. Therefore, I would request you to kindly arrange to furnish the reasons for discontinuation of their services. The post of Stenographer had also been lying vacant since June, 2007.”

4. As per clause 4 of the revised Scheme of Dr. Ambedkar Chairs “the post of Professor, Research Officer, Stenographer and Peon will be permanent and hence the persons working against each post will be treated on par with other regular staff in the University/Educational Institution for all purposes”. Further, you are also requested to let us know whether JNU is contemplating the removal of the Chair Professor also. We would also wish to know the future plans of the University in fulfilling the objectives of the Ambedkar Chair in the absence of these personnel.

5. I would also request you to kindly arrange to send the response of the University on the draft MOU sent by the Foundation vide OM No.10-3/2005-AF dated 17.07.2007, at the earliest.”

7. Mr.David, learned counsel appearing on behalf of the petitioner submitted that instead of giving response to the clarification mentioned

above, on 08.01.2008, the University issued an employment notice for filling up the post of Research Officer, the same post held by the petitioner, under Dr. Ambedkar Chair on a temporary basis for one year. Therefore, the petitioner was constrained to file the present writ petition assailing the termination order dated 07.11.2007 and the notice for employment dated 08.01.2008.

8. It is pertinent to mention that vide order dated 25.01.2008 this Court stayed the further recruitment process of the Research Officer pursuant to employment notice dated 08.01.2008.

9. Learned counsel for the petitioner submitted that the petitioner had challenged the unjust, discriminatory, mala-fide and illegal termination of his services by the respondent No.2 which is a Central University established by the Government of India under the Jawahar Lal Nehru University Act, 1966. It is primarily a research oriented post-graduate University having various schools and centres to conduct research and studies in various fields. The respondent No.3 is the Ambedkar Foundation which is established by the Ministry of Social Justice and Empowerment as a society registered under the Societies Registration Act, 1860. The main objectives of the Foundation include inter alia among others implementation of programmes and activities for furthering the ideology and message of Dr. B.R. Ambedkar. In furtherance of its objectives, the foundation established Dr. Ambedkar Chair in various Universities and institutions for undertaking study and research programmes on various aspects of the philosophy and mission of Dr. B.R. Ambedkar. The function of the Chair includes teaching, research

and evaluative studies, organizing seminars and workshops etc.

10. Ld. Counsel further submitted that the petitioner's right to work has been violated by the University by the impugned order and employment notice. The contention of the University, that the services of the petitioner were terminated because the Memorandum of Understanding(MOU) could not be entered into between the Foundation and the University, is a misleading. Dr. Ambedkar Chair was established in the University in 1993, however, till date the MOU has not been finalized between the parties despite exchange of communications and several meetings. It is further submitted that it is due to lack of initiatives taken by the University that the MOU could not have been entered into till date. This is evident from the minutes of the meeting of the Internal Advisory Committee of Ambedkar Chair held on 18.10.2007 which reads as under:-

“ Till such time, the MOU' is finalized engagement of the research and administrative staff needs to be kept in abeyance. The Committee was also briefed that the last approval was given for payment of salary of the research/administrative staff of the project with a stipulation that “We may release salaries for June and July 2007 as an exceptional case. The continuation of the staff may be terminated till we ensure funds from Ambedkar Foundation” This was communicated vide Office Order No.30/2007-2008 dated August 14, 2007 issued by the Deputy Registrar (Coll.). Therefore, the Committee requested Professor Nandu Ram to sent a letter giving reasons for continuing the staff and also to take steps that there would be no further extension. Dean, SSS felt that the staff should be given time upto November- 2007.”

11. It is further submitted that in the above said minutes of the meeting the Professor was to coordinate with the Foundation to finalize the MOU. However, no steps were taken on behalf of the Professor to finalize the same as is highlighted in the letter dated 07.01.2008 sent by the Foundation to the University where it has asked the University to send its draft response.

12. It is submitted that the petitioner could not be made to suffer or be victimized on the grounds of in-activity on behalf of the University and the Foundation. He further submitted that the contention of the University that due to non-release of funds from the Foundation they were constrained to terminate the services of the petitioner is false and erroneous. He submitted that the Foundation had been periodically releasing funds to the University in terms of the revised scheme. The release of funds were subject to submission of audited Utilization Certificate by the University. Any delay in release of funds by the Foundation accrued due to late submission of the Utilization Certificates. The University has been getting the instalments of grant-in-aid which is evident from the communications of the Dr. Ambedkar Foundation with the University which are at pages 70 to 85.

13. Ld. Counsel for the petitioner has relied upon a judgment of this Court in WP(C) No.13414-25/2005 titled as **Delhi University and College Karamchari Union v. University of Delhi** as under:-

“21. In said decision, Hon’ble Supreme Court drew attention to its earlier decision reported in AIR 1978 SC 597 Maneka Gandhi vs. Union of India which held that

reasonableness and non-arbitrariness is a part of article 14 of the Constitution of India and that there could not be arbitrariness in State action. The Hon'ble Supreme Court noted that in Maneka Gandhi's case (supra) did not deal with the issue of regularization of services of employees, but held that the principle of reasonableness in executive action is of general application."

14. Ld. Counsel for the petitioner has argued that an ad hoc employee can be replaced by a regular employee. After terminating the services of the petitioner, the University issued an employment notice dated 08.01.2008 for filling up the post of Research Officer which the petitioner was holding which is contrary to the established law and which establishes the malafide of the University authority. He has relied upon the judgment of the Supreme Court in the case titled as **State of Haryana v. Piara Singh (1992) 4 SCC 118**, as under:-

"45. 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, effort 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. The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an adhoc/temporary employee.

46. Secondly, an adhoc or temporary employee should not be replaced by another adhoc 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.

47. Thirdly, even where an adhoc or temporary employment is necessitated on account of the exigencies of administration, he should ordinarily be drawn from the employment exchange unless it cannot brook delay in which case the pressing cause must be stated on the file. If no candidate is available or is not sponsored by the employment exchange, some appropriate method consistent with the requirements of Article 16 should be followed. In other words, there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly.”

15. Counsel for the petitioner has also relied upon a decision of the Apex Court in the case titled as **Secretary, State of Karnataka v. Umadevi**(2006)4 SCC 1 as under:-

“33. By and large what emerges is that regular appointment should be insisted upon, only in a contingency can an ad-hoc appointment be made in a permanent vacancy, but the same should soon be followed by a regular recruitment and that appointments to non-available posts should not be taken note of for regularisation...”

16. Ld. counsel for the petitioner submitted that as per clause 4 and 5 of the revised scheme of Dr. Ambedkar Chair, the post of Research

Officer was a permanent post and to be treated as regular staff members of the University, as mentioned above.

17. Ld. counsel for the petitioner has produced a communication dated 19.09.2011 made by the Joint Secretary, Ministry of Social Justice and Empowerment with Vice-Chancellor, Jawaharlal Nehru University wherein it is stated as under:-

“Prof. Nandu Ram, who was regular Chair Professor, has retired on 31.07.2011, leaving, this important post vacant. DAF has released full admissible grant-in-aid @ Rs.10.00 lakh per annum to the Chair upto the year 2008-09. 1st installment for the year 2009-10 was also released on 04.03.2010. However, further grants to the Chair could not be released, due to non-submission of required Utilisation Certificates (UCs), and progress report. Necessary UCs etc. have been received recently vide your letter No. CE/DEV/CH/04/823 dated 24.08.2011, which are now being examined. Release of IInd Installment of grant for 2009-10 and subsequent period is under active consideration.”

18. Counsel for the petitioner submitted that even till date the University is getting grant-in-aid but the University does not submit the requirement Utilisation Certificate and progress report due to which sometimes the grant-in-aid was delayed. This does not happen because of the inaction of the Dr. Ambedkar Foundation but the University deliberately and malafidely does not submit the Utilisation Certificate. For the inaction of the University the petitioner should not be made to suffer.

19. On the other hand, ld. counsel for the respondent University has submitted that the appointment of the petitioner was purely temporary and could be terminated at any time as enumerated in the appointment letter of the petitioner. The petitioner was appointed in the Ambedkar Chair and not for the University purposes. The extensions in service given to the petitioner were on the same terms and condition on which he was originally appointed. The petitioner accepted the appointment on temporary basis and continued to work till the service was terminated. At no point of time the petitioner was given to understand that the petitioner was a permanent employee of JNU. The claim of the petitioner that he was a permanent employee of JNU is wrong and without any basis. A temporary employee has no right or lien to the post. Ld. counsel has also relied upon the judgment of the Constitution Bench of the Apex Court in the case titled as **Secretary of State of Karnataka vs. Uma Devi**, AIR 2006 SC 1806 to contend that a temporary employee could not claim to be made permanent on the expiry of his term of appointment.

20. Ld. counsel has further submitted that the draft MOU provides that the staff for the Chair would be recruited in accordance with the Rules & Regulations of the concerned University and that these posts to be on permanent basis. This could be done only after the signing of the MOU. As the MOU has not been signed till date the said staff could not be recruited on regular basis, because if at any time the Ambedkar Trust failed to remit the grant then JNU would be saddled with the responsibility of the staff recruited for the Chair. Draft MOU provided

that a Research Officer was to be equivalent to a Lecturer. Statute 26(2) of the University provides that appointment of a teacher shall be by the Executive Council of the University. Statute 26(9) further provides that Executive Council shall appoint a teacher on the recommendation of a Selection Committee. Statute 27 provides how a Selection Committee shall be constituted. In this case post was advertised by the Chair not by the JNU. Selection Committee was not constituted in accordance with Statute 27. The appointment letter was also given by the Vice-Chancellor and not by the Executive Council. Thus, the appointment of the petitioner was not valid and does not confer any right on the petitioner and it does not bind the University.

21. Ld. counsel has further referred to the case of **Uma Devi (supra)** wherein the Apex Court has observed that unless the appointment is in terms of the relevant rules and after proper competition among qualified persons the same would not confer any right on the appointment. The service of the petitioner had to be terminated because the Ambedkar Trust failed to remit the grant for the running of the Chair. Whereas Prof. Nandu Ram was already a member of Faculty of JNU. He was selected for the Chair. On the closure of the Chair he reverted back to the University. His salary was debited to the Chair only during the period he was looking after for the affairs of the Chair. Once a person is permanent employee he has a lien on the post and has a right to come back to his original post. He has further submitted that in fact JNU is not running the Ambedkar Chair as no settlement could be arrived at.

22. Respondents No. 1 and 3 have also filed their counter affidavits wherein they have stated that against each of posts persons shall be recruited in accordance with the Statutes, Rules and Regulations followed by the concerned Universities/Educational Institutions in this regard and keeping in view the conditions stipulated under the Memorandum of Understanding entered between Dr. Ambedkar Foundation and the concerned University/Institutions. Further, in respect of service matters that staff functioning under the Chairs shall be governed by the Rules and Regulations and Statutes followed by the University/Institution in this regard. The staff working under the Chairs shall be eligible for all benefits such as HRA, CCA and all other allowances/benefits which are available to the rest of the staff working under such Universities/Institutions. The answering respondents have denied any role to play in the appointment of the staff but as per the MOU the Selection Committee shall include a representative from Dr. Ambedkar Foundation. However, while terminating the services of the petitioner Dr. Ambedkar Foundation was not consulted. The respondent No.3 asked the University authority to furnish the reasons for discontinuation of the services of the petitioner, however, no response was received. The University even did not consult Dr. Ambedkar Foundation in issuing the employment notice for filling up the post falling vacant due to termination of the services of the petitioner.

23. After hearing the learned counsel for the parties, it is emerged that initially Dr. Ambedkar Foundation had set up Dr. Ambedkar Chair at Jawahar Lal Nehru University so as to provide a center of learning and

research on the issues concerning the socio-economic and cultural life of Scheduled Castes, Scheduled Tribes, Minorities and Other Backward Classes of the society. The Foundation introduced a revised scheme of Dr. Ambedkar Chair in the University by its letter dated 10.09.1998. As per the revised scheme, the Chair had one post for Research Officer, which would be treated at par with other regular staff in the University for all purposes. The petitioner was selected on 13.08.1999 by the Selection Committee against the post of Research Officer under the aforesaid Chair after taking an interview. The petitioner was given fifteen extensions and three increments from November, 2000 to November, 2007.

24. It is pertinent to note here that the petitioner's services were terminated vide office order dated 07.11.2007. On his termination, the respondent Dr. Ambedkar Foundation sought clarification from the University vide its communication dated 07.01.2008, wherein it is submitted that as per Clause 4 of the revised Scheme of Dr. Ambedkar Chairs, the post of Professor, Research Officer, Stenographer and Peon will be permanent and hence the persons working against each post will be treated at par with other regular staff in the University/Educational Institution for all purposes.

25. Undisputedly, the University terminated the services of the petitioner only and rest of the persons continued on their respective posts. The petitioner has levied the allegations of mala fide which seems to be true by the employment notice dated 08.01.2008 for filling up the post of Research Officer. The stand of the respondent has no relevance that the

service of the petitioner was terminated because the Ambedkar Trust failed to remit the grant for the running of the Chair. If it is to be believed, then why the University issued another employment notice dated 08.01.2008 for filling up the same post. Moreover, this Chair is continued in all the Central Universities as the said Chair is under the Dr. Ambedkar Foundation, which is under the Ministry of Social Justice and Empowerment.

26. The University is getting grant-in-aid for running the said Chair smoothly and the petitioner continued on the post of Research Officer till his termination from the service. Undisputedly, there is no adverse allegation against the petitioner. He got extension after extension and increments as well. The duly constituted Committee selected the petitioner after considering his qualification and knowledge on the subject. The Foundation had been periodically releasing the funds to the University in terms of the revised Scheme. The release of funds was subject to submission of the Audited Utilization Certificate by the University. Any delay in releasing of the funds by the Foundation accrued due to late submission of the Utilization Certificate. The University has been getting installments of grant-in-aid regularly, therefore, the Dr.Ambedkar Chair is continuing in all the Central Universities.

27. Law has been settled in **State of Haryana v. Piara Singh (supra)** that an *ad-hoc* employee can be replaced by a regular employee. After termination of the service of the petitioner, the University issued an

employment notice, as mentioned above, for filling up the same post, which is contrary to the established law.

28. The law has also been decided in the case of Uma Devi (supra) that by and large the regular appointment should be insisted upon, only in a contingency can an *ad-hoc* appointment be made in a permanent vacancy, but the same should soon be followed by a regular recruitment and that appointment to non-available post should not be taken into note of for regularization.

29. This Court is conscious that the revised MOU is in force and the University is getting grant accordingly, however, the staff could not be recruited on regular basis. Admittedly, the staff working under the Chairs shall be eligible for all benefits such as HRA, CCA and all other allowances/benefits, which are available to rest of the staff working under such Universities/Institutions. The stand of respondents No. 1 and 3 belies all the arguments of the respondent/University that against each posts, persons were recruited in accordance with the Statute, Rules and Regulations followed by concerned Universities/Educational Institutions in this regard and keeping in view the conditions stipulated under the MOU entered between Dr. Ambedkar Foundation and the concerned Universities/Institutions. Though the respondent/University has denied the role of Dr. Ambedkar Foundation in appointment for the staff in Dr. Ambedkar Chair, but that is contrary to Clause 4 of the revised MOU, wherein it is clearly stated that one representative from Dr. Ambedkar Foundation shall be included in the Selection Committee.

30. While terminating the service of the petitioner, University did not even consult the Dr. Ambedkar Foundation, who is providing the grant-in-aid. Even if it is presumed that the petitioner was not the employee of the University, then the respondent/University had no power to terminate the services of the petitioner. Since Dr. Ambedkar Chair is being run on the grant-in-aid provided by respondents No. 1 and 3, therefore, the University would have taken the aforesaid respondents into confidence before taking any action. If at any point of time Dr. Ambedkar Foundation has not provided the grant-in-aid, then duty of the University was to convey the said Foundation that if they would not get the aid, it would be difficult for them to run the Chair.

31. While dealing with this case, it is emerged that Dr.Ambedkar Chairs are running only on the mercy of the Universities. The finances for the Central Universities and the Dr.Ambedkar Chairs are being granted by the Central Government. The work assigned to these Chairs is permanent in nature. It is not a tenure object, which can be achieved in a few years. Therefore, the Ministry of Social Justice and Empowerment along with other concerned Ministries should take steps so that such type of situation do not occur in future.

32. The petitioner was duly selected by the Selection Committee and worked more than eight years as Research Officer. All of a sudden and without any notice he was terminated by the University by keeping him in lurch. Law does not permit any of the institution to play with the life of any person who was duly selected by a Selection Committee and when

as per the arrangement, the posts are permanent in nature. There was no occasion for the University to terminate the services of the petitioner.

33. It is pertinent to record that vide order dated 25.01.2008 passed by this Court, the recruitment process of the Research Officer pursuant to employment notice dated 08.01.2008 was stayed. Consequently, the aforementioned post is still lying vacant.

34. In view of the submissions and the discussion as above, the impugned order dated 07.11.2007 is hereby set aside. Consequently, the petitioner is reinstated in service with all consequential benefits. As the past salary is concerned, he shall be entitled to 50% of his back wages.

35. In view of the above, the instant writ petition stands disposed of with no order as to costs.

CM No.1280/2008 (for stay)

With the disposal of the petition itself, the instant application has become infructuous. The same is disposed of accordingly.

SURESH KAIT, J.

OCTOBER 31, 2012
RS/sb