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

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W.P.(C) No. 3798/2012

**17<sup>th</sup> May, 2013**

AZEEM AKHTER

.....Petitioner

Through: Mr. Rana Ranjit Singh and Mr. Jasmeet  
Singh, Advocates.

VERSUS

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Saqib, Adv. for R-1.

Mr. Mushtaq Ahmad and Mr. Shaikh Chand  
Saheb, Advocates for R-2.

Mr. Amitesh Kumar, Adv. for R-3/ UGC.

**CORAM:**

**HON'BLE MR. JUSTICE VALMIKI J.MEHTA**

To be referred to the Reporter or not?

**VALMIKI J. MEHTA, J (ORAL)**

1. This writ petition is filed by the petitioner Sh. Azeem Akhter seeking direction to the respondent-2-University/Jamia Hamdard Deemed University for regularizing the service of the petitioner to the post of Security Inspector in terms of the decision of Executive Council of the respondent no.2 dated 4.11.2006.

2. The facts of the case are that the petitioner was appointed initially on contractual basis for a period of two years in terms of the appointment letter dated 3.12.2004. Actually, the appointment in terms of the advertisement pursuant to

which the petitioner was appointed was to be for five years and not for two years, and therefore, the appointment letter provides for extensions for completing a total period of five years after review of performance. The petitioner completed the original period of two years of service and further period of three years of service. Petitioner's service has thereafter been extended from time to time by ad hoc appointments of six months. Petitioner claims that the Executive Council of the respondent no.2 in its 55<sup>th</sup> Meeting held on 4.11.2006 passed a Resolution for regularizing the appointments of contractual employees such as the petitioner, but the petitioner has not been regularized though other employees such as one Ms. Aisha, Staff Nurse has been regularized vide respondent no.2's letter dated 27.3.2008. Petitioner claims implementation of the Resolution of the Executive Council of the respondent no.2 dated 4.11.2006 and seeks parity with Ms. Aisha.

3. A reading of the counter-affidavit shows that there is no dispute that the Executive Council of the respondent no.2 has passed the Resolution dated 4.11.2006 for regularization of contractual appointees. So far as Ms. Aisha is concerned, the counter-affidavit only conveniently states that she was regularized on the basis of her individual merit. Though, it is stated that her case is different from the petitioner, it is not pleaded as to how her case is different from that of the petitioner. I may note that the counter-affidavit though mentions that Ms. Aisha was found fit by the Appointment Committee for regularization, however, it is not

stated in the counter-affidavit that petitioner has been found unfit by any Appointment Committee.

4. Since the language of the relevant part pertaining to regularization of contractual employees in the Resolution of the 55<sup>th</sup> Meeting of the Executive Council of the respondent no.2 dated 4.11.2006 is relevant, the same is reproduced as under:-

“ES55(10) RECOMMENDATIONS OF THE COMMITTEE CONSTITUTED TO LOOK INTO THE PROPOSED GUIDELINES OF CONTRACTUAL APPOINTMENT IN THE LIGHT OF THE OBSERVATIONS OF THE EXECUTIVE CONCIL.

Prof. mohd. Amin pointed out that the Executive Council had already approved conversion of existing contractual appointments into regular once. The emphasized that the cases for regularization of those employees who are already working as contractual basis be taken up as early as possible he further stressed that these employees should not become junior to those employees who are now being appointed by the university on regular basis and that the interests of the existing employees should be taken care of.

The Secretary clarified that as per the recommendations of Prof. Amin Committee. Assessment Committees for teaching and non-teaching employees have been constituted and their reports are being processed. He further clarified that if the services of an employee working on contractual basis is regularized his/her seniority will not be affected.

Thereafter the following Resolution was adopted

“resolved that the action taken on the minutes of the 55<sup>th</sup> meeting of EC held on 04/11/06 are noted and approved wherever necessary”

5. A reading of the aforesaid Resolution quite clearly shows that contractual appointees such as the petitioner were to be regularized. Therefore, Ms. Aisha, Staff Nurse was regularized in terms of the letter dated 23.7.2008 of the respondent no.2. Petitioner has however been discriminated against by the arbitrary action of the respondent no.2 in not converting his contractual appointment to a regular appointment. Though counsel for the respondent no.2 has argued that it is the absolute privilege of the respondent no.2 to decide when, whether and how decision of the Executive Council dated 4.11.2006 has to be implemented, I find that the argument totally lacks substance and the same flies in the face of fundamental duty of the respondent no.2 as a State under Article 12 of the Constitution of India. A State cannot act arbitrarily and whimsically, and if it is allowed to do so, the flag post of the Constitution being Article 14 would be squarely hit. Respondent no.2 cannot be allowed to pick and choose its employees for regularization and also at what point of time it will regularize them since the categorical position is that the 55<sup>th</sup> Meeting of the Executive Council dated 4.11.2006 has become final and binding. It may be noted that it is nowhere stated in the counter-affidavit of respondent no.2 that the decision taken by the Executive Council in its 55<sup>th</sup> Meeting held on 4.11.2006 is not final.

6. In view of the above, action of the respondent no.2 is arbitrary and discriminatory in not regularizing the employment of the petitioner as Security

Inspector. Petitioner has been unnecessarily forced to resort to this litigation, and that too for implementation by the respondent no.2 of the decision of its own Executive Council dated 4.11.2006.

7. The writ petition is therefore allowed. Respondent no.2 is directed to regularize the services of the petitioner as Security Inspector in terms of the Resolution passed by the Executive Council in its 55<sup>th</sup> Meeting dated 4.11.2006. The respondent no.2 is also restrained from carrying forward the advertisement of May,2012 (Annexure P-26) for appointing a Security Inspector.

8. The writ petition is accordingly allowed and disposed of, leaving the parties to bear their own costs.

**MAY 17, 2013**  
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**VALMIKI J. MEHTA, J.**