

IN THE HIGH COURT OF MANIPUR AT IMPHAL

WP(C) No.764 of 2023
with
MC (WP(C)) No.342 of 2023
with
MC (WP(C)) No.414 of 2023

Dr.Murli Manohar, aged about 39 years,
s/o Surendra Prasad Pandit, resident of
Mirjanhat, Bhagalpur, Bihar 812005
currently residing at R2-101, IIT Manipur,
PO Mantripukhri, PS Heingang and District
Imphal East, Manipur 795002.

... Petitioner

-Versus-

1. The Union of India through the Principal Secretary/commissioner/Secretary, Ministry of Education, Govt. of India Shastri Bhawan, New Delhi-110001.
2. The Director, Indian Institute of Information Technology (IIIT), Manipur, Mantripukhri PO Mantripukhru, PS Heingabg and District Imphal East, Manipur.

... Respondents

BEFORE
HON'BLE MR. JUSTICE A.GUNESHWAR SHARMA

For the Petitioner: Mr.B.P.Sahu, Sr.Advocate &
Mr.A.P.Sahu, Advocate

For the Respondents: Mr.Kh.Samarjit, DSGI &
Mr.Nongdamba, Advocate

Date of Hearing: 15.01.2024

Date of Order: 01.04.2024

JUDGMENT & ORDER [CAV]

[1] Heard Mr. B. P. Sahu, learned senior counsel assisted by Mr. Anjan Prasad Sahu, for the petitioner Mr. Kh. Samarjit, learned DSGI assisted by Mr. N. Nongdamba, learned counsel for the respondents.

[2] It is the case of the petitioner that the petitioner was appointed to the post of Visiting Assistant Professor in the Department of Electronics and Communication Engineering in the Indian Institute of Information Technology Manipur, vide order dated 25th June, 2015 on contract basis for a period of one year. Service of the petitioner was extended from time to time. Order dated 30th May, 2023 is the last such extension of service w.e.f. 03.06.2023 to 02.11.2023.

[3] It is also stated that the petitioner while serving as Assistant Professor in the Department of Electronics and Communication Engineering from 1st July 2015 to 08.04.2019, the Interim Director, IIT Manipur issued certificate dated 08.04.2019 for his sincere service and experience. Further, the petitioner requested the Director, IIIT Senapati, Manipur for issuance of experience certificate for the period from 01.07.2015 to till date. The petitioner tendered another representation dated 23.02.2023 to the Director, IIIT, Manipur for issuance of experience certificate as he wished to

apply to other institutes in the interest of his career. However, the Director assured the petitioner that his service would be extended again till his regularization and that he needs not apply elsewhere and on that ground experience certificate has not been issued till date. Due to non-issuance of experience certificate, petitioner has been deprived of his right to apply to other institutes and it is stated that such certificate is mandatory for applying for appointment to other institutes.

[4] The petitioner further stated that without issuing any termination order, he was informed verbally on 01.11.2023 that his contract would not be extended beyond 02.11.2023 and no reason whatsoever was assigned for the same. Further, the terms of his employment stipulate that a notice period of three months would be intimated before termination of contract. No such notice was issued, nor was any show cause notice served to the petitioner.

[5] It is submitted that the other four incumbents who had joined IIIT, Manipur along with the petitioner have all been allowed to continue in their service, and only the petitioner has been personally picked and victimised. The petitioner is even more qualified than some of the other four incumbents.

[6] The petitioner, having no alternative, approached this Court praying for allowing him to continue in his post and to regularize him to the said post with all consequential benefits.

[7] Respondents have filed affidavit-in-opposition stating that the Indian Institute of Information Technology (IIIT), Manipur, an Institute of national importance under the Ministry of Education, Government of India, was established under the public-private partnership (PPP) mode under the Indian Institutes of Information Technology (Public Private Partnership) Act, 2017 and Statute of 2017 with stock holding of (i) Govt. of India- 57.5%, (ii) Govt. Of Manipur- 35.0%, and (iii) M/s Cyber Corporation Manipur Ltd (CCML)- 7.5% with a view to develop new knowledge in information technology and to provide manpower in this field. Initially, IIT, Senapati, Manipur was established in the year 2015 and in the 2nd Governing Body Meeting of IIIT-Manipur held on 19.02.2015, a total of 16 numbers of various faculty and other 22 non-faculty staff for the institute was proposed. As a contingency plan awaiting regular recruitment of the posts as per rules, it was further proposed to share faculties of other nearby institutes and to explore outsourcing. In the year 2015, the Interim Director of IIT-Manipur appointed 6 (six) Visiting Assistant Professors on temporary contract basis for a period of one year. It is stated that the petitioner was one among them and was appointed as Visiting Assistant Professor (on contract) on 01.07.2015 on the basis of the resume submitted by the applicant. It is clarified that the engagement/appointment was done without due process of recruitment through open advertisement or

through a selection committee and as a stop gap arrangement till the completion of the recruitment process on regular basis. The contractual service of the contract Visiting Assistant Professors including the petitioner has been extended from time to time. It is further stated that the extension of the contract service is on the basis of performance as per Clause 2 of the Terms of Appointment for the Purely Temporary Faculty. Clause 3 provides that the temporary appointment will be terminated automatically on expiry of the contract period. Clause 12 further provides that the temporary service is terminable with three months' notice on either side. One of the appointees left the institute in the year 2019 for regular employment in some other place and out of the 6 original appointees, only 5 Visiting Assistant Professors are remaining in the institute. It is reiterated that the institute has the right not to renew/extend the contractual term of the petitioner considering the nature of his appointment and the numerous adverse reports filed against him which were also endorsed by the Head of Department, Electronic and Communication Engineering, Head of Academic Section and Warden of the Girls Hostel. As per Annexure R-4 (colly) appended to the counter affidavit, the profile of 6 Faculty recruited in the year 2015 on temporary basis in different departments, seven adverse remarks have been recorded in the remarks column against the petitioner such as, (i) harassing & intimidation of a female

student, (ii) negligence of duty & subordination, (iii) repeated complaints of students on his poor teaching, (iv) unauthorised absence on 27.11.2023 & 31.10.2023, (v) disregard of institute rules and causing nuisance, (vi) not adhering to timeline for submission of assessment marks resulting in inordinate delay, and (vii) not maintaining and conducting lab experiments effectively as mandated. The performance of the petitioner was assessed as NOT satisfactory. Copies of the reports from HoD (ECE), HoS (Academic), Warden of Girl Hostels and statements of girl inmates are attached to the profile of the petitioner.

[8] The petitioner filed rejoinder affidavit reiterating the contents of the writ petition and denying the allegations made against him in the counter affidavit of the respondents. It is stated that the petitioner has been subjected to harassment and ill treatment with an ulterior motive to terminate him and appoint someone else in his place. It is denied the allegation of unauthorised absence. It is stated that the service of other candidates has been extended while the same is illegally denied to him and the allegation of poor performance and unsatisfactory service are an afterthought to cover up the lapses on the part of the respondents. The non-functioning of the lab was due to unavailability/defective equipment in spite of his requisition for rectification of the same. Regarding delay in assessment of answer scripts, it is clarified that he was not

given sufficient time to evaluate and the department has not set any time frame. It is also stated that the female student and hostel warden have already withdrawn the complaint against him. It is pointed out that the IIIT-Manipur awarded a Certificate of Appreciation to the petitioner for highest attendance in the semester and for his contribution on the occasion of 1st Institute Day held on 21.04.2023. Due to non-issuance of experience certificate, the petitioner missed to appear in an interview for faculty for ISBM College of Engineering, Pune to be held on 09.12.2023.

[9] The respondents filed their reply to the rejoinder affidavit filed by the petitioner. It is stated that the petitioner did not furnish any copy of tickets to justify his late joining to duty from leave nor did he send any mail in this regard. It is stated that service of 4 other employees was extended based on their performance and the same was denied to the petitioner due to poor performance and complaints against him. Regarding the requisition submitted by the petitioner for purchase of equipment, the same could not be processed as it was not supported by necessary documents and other technical defects. It is further stated that the petitioner could not submit the assessment marks in spite of reminders from the institute. Regarding the withdrawal of the complaint by a female student, it is clarified that the same was addressed to the hostel warden and not reached the office of the institute. The other 3

students have not retracted from their statements against the petitioner.

[10] Along with the writ petition, the petitioner also filed an application being MC(WP(C)) No. 342 of 2023 for restraining the respondents from disturbing his service during the pendency of the writ petition. On 06.12.2023, another application being MC(WP(C)) No. 414 of 2023 was also subsequently filed for a direction to the respondent No.2 to issue experience certificate in respect of the petitioner for the service rendered by him in IIIT-Manipur. On 03.11.2023 this Court issued notice and learned counsel appearing on behalf of respondents sought some time for instructions and the matter was directed to be listed on 07.11.2023 for consideration of interim relief.

[11] Vide order dated 07.11.2013, this Court passed an interim order directing the respondents to allow the petitioner to continue in the service till next date as temporary service of four other persons initially appointed along with the petitioner was extended. This Court observed that the matter required hearing after filing of counter and rejoinder affidavits and did not express any opinion on the regularisation of the service of the petitioner. The matter was directed to be listed on 23.11.2023 for final disposal.

[12] The respondents challenged the interim order dated 07.11.2023 by way of an appeal being WA No.98 of 2023 and vide

order dated 22.11.2023, the appeal against interim order was dismissed by a Division Bench of this Court being devoid of any merit at that stage.

[13] After completion of pleadings, the matter was finally heard on 15.01.2024 and reserved for order. Earlier the petitioner moved a contempt petition being Cont. Case (C) No.118 of 2023 alleging violation of the interim order dated 07.11.2023, but the same was closed on 23.11.2023 recording the submission of the respondents that the interim order had already been complied with.

[14] Mr. B P Sahu, learned senior counsel for the petitioner submits that the petitioner has been victimised by the respondents. While contractual service of other employees appointed along with the petitioner has been extended, his service has not been extended without giving any reason and with a mala fide intention. It is pointed out that as per Clause 12 of terms of employment, a notice of 3 months would be required for termination of service and the same was not complied by the respondents. It is asserted that such action is arbitrary and violative of the principles of equality enshrined in Articles 14 and 16 of the Constitution of India. It is pointed out that the plea of unsatisfactory service and adverse reports against the petitioner is an after thought to cover up the observations made by this Court as well as the Division Bench in appeal regarding non-intimation of show cause notice to the petitioner.

[15] Mr. B P Sahu, learned senior counsel draws the attention of this Court to the decision of Hon'ble Supreme Court in the case of **Raman Kumar v. Union of India: 2023 Live Law (SC) 520** @ Para 8 & 20 where the service of remaining 30 employees were directed to be regularised where the service of 35 similarly situated persons had already been regularised by the authority. Reliance is also placed on a decision of a Division Bench of this Court in the case of **Central Agricultural University v. Gopal Bhandari [WP(C) No. 765 of 2016, Order dated 30.01.2023]** where it was deprecated the practice of selective absorption of similarly situated persons. Reference is made to the decision of Bombay High Court in the case of **Pandurang Kashinath More v. Union of India: AIR 1959 Bom 134** to highlight the point that guarantee given by Articles 14 and 16 extends to all strata of employment whether it be temporary or permanent. Learned senior counsel also cites decision of Calcutta High Court in the case of **Saroj Agarwal v. Union of India: Indiankanoon.org/ doc/4098839** where back wage was granted as the employer victimised the employee. It is prayed that the writ petition be allowed and the respondents be directed to extend the contractual service of the petitioner as done for other similarly persons and to issue experience certificate to him for applying in other institutes.

[16] Per contra, Mr. Kh. Samarjit, learned DSGI submits that it is the settled proposition of the law that a contract employee has no inherent right to claim for extension of his service and regularisation thereof. He draws the attention of this Court to the "Terms of Appointment for the Purely Temporary Faculty" [Page 18-19 of writ petition]. Clause 1 stipulates that the appointment as Visiting Assistant Professor is purely temporary in nature. Clause 2 provides that further extension will be based on performance and Clause 3 prescribes for automatic termination of temporary appointment on expiry of contract period. As per Clause 4, the performance of Visiting Assistant Professor will be reviewed by the authority and Clause 12 provides that the temporary service is terminable with 3 months' notice on either side. Learned DSGI explains that the contract is automatically terminated by efflux of time unless extended and 3 months' notice is required for premature termination before expiry of the period of contract. It is stated that the performance of other candidates is satisfactory and hence their service has further been extended. But in the case of the petitioner, there are lots of complaints against him and his performance was not satisfactory to the institute as reflected in the profile of contract Visiting Assistant Professors as enumerated in Annexure R-4 appended to the counter affidavit of the respondents. It is clarified that no written intimation is required for non-extension

of temporary engagement in terms of Clause 3 of the terms of engagement. It is further reiterated that in view of such serious adverse materials against him, the term of engagement of the petitioner is not extended and he cannot claim for automatic extension and regularisation. It is pointed out that the engagement was done without following due process as a stop gap arrangement at the initial stage.

[17] Mr. Kh. Samarjit, learned DSGI relies on the decision of Hon'ble Supreme Court in the case of **Yogesh Mahajan v. Professor R C Deka: (2018) 3 SCC 218 @ Para 6** to the point the contract employee has no right to have his or her contract renewed from time to time. There was no material to show that the contractual appointment was made as per prescribed rules. Reliance is also placed on the case of **Vidyavardhaka Sangha v. Y D Deshpande: (2006) 12 SCC 482 @ Para 4** holding that '.... the appointment made on probation/ad hoc basis for a specified period of time comes to an end by efflux of time and the person holding such post can have no right to continue on the post and ask for regularisation, etc'. Referring to the above decisions, learned DSGI submits that the petitioner who has been appointed on temporary basis for a fixed period cannot claim for further extension as a right and his service is terminable by efflux of time. The extension is purely discretionary power of the respondents on appraisal of the

performance. In the present case, the respondents choose not to extend the contract of the petitioner due to poor and unsatisfactory performance. As regard application being MC(WP(C)) No. 414 of 2023 for direction for issuing experience certificate, it is submitted that the same is not maintainable being a separate and an independent cause. It is prayed that the writ petition along with applications be dismissed being devoid of any merit.

[18] This Court considers the material on record, the submissions made at bar and the decisions cited by parties.

[19] ***The point for determination involved in the present case is whether temporary appointee for a fixed term like the petitioner herein has an inherent right for claiming for extension of his appointment and regularisation.***

[20] Admitted facts in the present case are that the petitioner and others were engaged on temporary basis as Visiting Assistant Professors in IIIT-Manipur as a stop gap arrangement in 2015 at initial stage till completion of process for regular appointments. Their service has been extended from time to time. The initial engagement on temporary basis was not done through open advertisement as per procedure prescribed by rules. It is clear from a bare perusal of "Terms of Appointment for the Purely Temporary Faculty" that the appointment is on purely temporary

basis for a fixed period extendable on performance basis and the temporary appointment is automatically terminated on expiry of the contract period. Performance will be assessed by the authority. Premature termination can be made with three months' notice from either side. As per the terms of temporary appointment, the extension is performance based at the discretion of the authority and there is no inherent right for such extension. The above cited case laws stipulate that the temporary appointees have no right to claim for extension and their temporary services will be terminated with efflux of time. However, there is a caveat to this settled principle that there can be no discrimination amongst similarly situated persons while considering for extension or regularisation. It is also settled law that equality under Articles 14 and 16 of the Constitution of India would extend to all employees whether regular or contract. Within this prism, the claim of the petitioner has to be examined.

[21] It is the case of the petitioner that he has been discriminated and victimised by the respondents. While other similarly appointees have been granted extension of temporary engagement, the same benefit is not given to the petitioner without any reason. It is also pointed out that the allegation of not satisfactory service and adverse report is an afterthought to dilute the observations of this Court for not giving any reason or show

cause. On the other hand, it is the specific case of the respondents that the temporary service of the petitioner has not been extended due to non-satisfactory performance and complaints against him. As per terms of appointment, the term of appointment can be extended on performance basis to be evaluated by the concerned authorities of the respondents. It is pointed out that the performance of the petitioner is not found to be satisfactory and he is rightly not considered for extension. It is the case of respondents that giving reasons for non-extension of temporary service is not required as the service is automatically terminated with efflux of time unless extended further. The reason given in the counter-affidavit by the respondent for non-extension is just to answer the allegations made by the petitioner in the writ petition. It is stated that the same cannot be construed as an afterthought.

[22] This Court finds force in the submissions of Mr. Kh. Samarjit, learned DSGI appearing on behalf of the respondents. As per terms of temporary appointment, the engagement is automatically terminated by efflux of time unless extended by the authority on appraisal of satisfactory performance. This Court is of the considered view that the temporary appointee has no inherent right to claim extension and the same is discretion of the authority on appraisal of performance. If similarly placed persons are given extension of service, then the court can interfere and pass

appropriate directions in favour of similarly situated persons who have been left out. However, in the present case, the case of four persons whose service has been extended are not similarly situated as that of the petitioner. The authority found the performance of four of them as satisfactory and that of petitioner not satisfactory as reflected in Annexure R-4 (profile of temporary Visiting Assistant Professors engaged in 2015). The facts of the case laws cited by the petitioner are not similar to the present case as similarly situated persons were discriminated therein and the courts had to interfere on the principle of equality. But, in the present case, the performance of the petitioner is not satisfactory and he is not at par with four other colleagues and is not considered for extension in view of terms of appointment.

[23] In view of the observations and findings arrived as above, specially in Para 22, this Court does not find any merit in the writ petition and accordingly, the same is dismissed. Interim order dated 07.11.2023 is vacated. However, in order to do complete justice and to avoid multiplicity of litigations, the respondents are directed to issue experience certificate to the petitioner within a period of 15 days from the date of receiving of a copy of this order, if the same is permissible as per rule/instruction. The parties are directed to bear their own costs.

[24] Send a copy of this order to the Director, Indian Institute of Information Technology, Manipur at Mantripukhri for information and necessary compliance.

JUDGE

FR/NFR

priyojit

KH.
JOSHUA
MARING

Digitally signed by
KH. JOSHUA
MARING
Date: 2024.04.02
09:57:17 +05'30'