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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No. 8539 of 1994(O&M)

Date of decision : 01.04.2015

Ranvir Sheoran

..... Petitioner

versus

**The Maharishi Dayanand University, Rohtak
and others**

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present: R.K.Malik, Sr.Advocate with
Mr. Ramandeep Singh, Advocate for the petitioner.

Mr.Anurag Goyal, Advocate with
Mr.Lalit Rishi, Advocate for the respondent-University.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

AJAY TEWARI, J. (Oral)

By this petition the petitioner has challenged the action of the Executive Committee and the Chancellor setting aside relaxation granted in favour of the petitioner.

The undisputed facts are that the petitioner was working as a Clerk in the respondent university. The university also runs a school and one of the biology teachers of that school went on leave. Admittedly without any advertisement and without any selection process whatsoever the petitioner was allowed to work against that post

by letter dated 12.04.1991 Annexure P-1. That letter makes interesting reading, because, on the one hand it offered ad hoc appointment as teacher and on the other hand directed that during vacation the petitioner would work in the university office. Further even though there was a clause for regularisation, yet admittedly the petitioner did not fulfil that criteria since on that date neither he had any degree in biology nor did he otherwise fulfil the essential qualifications for the post of TGT because he did not have the requisite teaching experience of 3 years in a recognised English Medium School with NCERT/CBSE syllabus. On 21.01.1994 the Vice Chancellor of the University regularised the services of the petitioner. When this matter was put up before the Executive Council, it noticed that the petitioner had never faced any selection committee, the post had never been advertised and on 21.01.1994 he did not have even three years experience and consequently refused to approve the action of the Vice Chancellor. The matter was referred to the Chancellor who also endorsed the decision of the Executive Council and that is why the petitioner is before this court.

Learned senior counsel has argued that the only mistake made was that the regularisation order was passed on 21.01.1994. Had it been passed after 2 ½ months, on 11.4.1994, it would have been valid. As per him this small error cannot justify the decision of the Executive Council and the Chancellor. In this connection he has relied upon **Dr. Anil Kumar Vij and another v. State of Punjab and others** reported as 1992(4) SLR 538 and **Ram Sarup v. State of Haryana**

and others reported as AIR 1978 SC 1536. Learned counsel for the respondent-University has, however, pointed out that both these judgments are distinguishable because in both those cases the initial appointment was an irregularity whereas in the present case the initial appointment was itself void because neither the petitioner was qualified nor was there any advertisement and nor the petitioner even faced a selection committee. As per learned counsel even though the letter Annexure P-1 purported to be an appointment letter, yet the stipulation that the petitioner would have to work in the university office during vacations could only mean that at best the petitioner was seconded to do the job of teaching. As per learned counsel the appointment was also void because for a biology teacher's job a person who had B.A. in Public Administration was appointed. Learned counsel for the respondent states that where the appointment is completely void, no right can enure to the petitioner.

Learned senior counsel for the petitioner has pointed out that in an additional affidavit dated 27.11.1994 the petitioner had given the details of many persons who were also appointed by the University without any advertisement and who were also regularised before they could earn the necessary experience. In my opinion that fact by itself will not help the petitioner. It is well known that discrimination cannot be claimed against illegal benefits,. Reference may be made in this regard to the case of **Post Master General, Kolkata and others v. Tutu Dass(Dutta)** reported as (2007)5 Supreme Court cases 317 where

their lordships held as follows:-

“18. There are two distinctive features in the present case, which are:

(i) Equality is a positive concept. Therefore, it cannot be invoked where any illegality has been committed or where no legal right is established.”

In my opinion this judgment would completely cover the facts of the case of the present petitioner. When the petitioner was 'appointed' as a TGT he neither had the educational qualification for the post because the post was that of biology teacher while the petitioner was merely a B.A.; nor did he have the necessary experience of three years. Moreover, it was a completely back door appointment. In these circumstances the exposition of law made by the Hon'ble Supreme Court in the case of Post Master General, Kolkata v. Tutu Dass(Dutta)(supra) would bar any relief to the petitioner.

The petition is dismissed.

Since the main case has been decided, the Civil Misc. Application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

April 01, 2015
sunita