

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. W. P. No. 6377 of 2014 (O&M)

Reserved On : July 03, 2015

Pronounced On : 09.07.2015

Dr. Barinder Kaur Petitioner

vs.

Guru Nanak Dev University, Amritsar
and others Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

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To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

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Present : Mr. Harinder Sharma, Advocate
for the petitioner.

Mr. Amrit Paul, Advocate
for respondents no.1 and 2.

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DEEPAK SIBAL, J. :

Through the present petition, the petitioner seeks quashing of order dated 27.03.2014 (Annexure P-6), whereby her services as Principal of Guru Nanak Dev University College, Narote Jaimal Singh, District Pathankot (hereinafter referred to as – the respondent College), where she was working on contractual basis, have been replaced by respondent no. 3.,

who has been given additional charge as Principal of the respondent College. The petitioner further prays for the issuance of a writ in the nature of mandamus directing respondents no. 1 and 2 to allow her to work as Principal in the respondent College till the post of Principal is filled up on regular basis.

The petitioner is M.A. in first division, M.Phil in first class with distinction and Ph.D. Her profile further shows that she is on the list of approved Lecturers by Guru Nanak Dev University, Amritsar (hereinafter referred to as – the respondent University) and on the list of approved Principals by the Panjab University, Chandigarh. The petitioner is further recipient of several awards in both academic, as also extra curricular fields.

Vide appointment letter dated 27.06.2011, the petitioner was appointed as a Principal of the respondent College (a constituent College of the respondent University). Her appointment was for the period of 11 months or till a regular appointment was made, whichever was earlier. She was to draw a consolidated salary. The appointment was offered to the petitioner only after the recommendations of the selection committee, which had selected her, had been approved by the Syndicate of the respondent University.

In pursuance to the above appointment, the petitioner joined as Principal of the respondent College and on expiry of the period of 11 months, on approval by the Syndicate of the respondent University and as

per the orders passed by the Vice Chancellor, her services were extended for another period of 11 months or till regular appointment was made, whichever was earlier, on the same terms and conditions as her initial appointment. On the successful completion of the extension period, her services were extended for another period of 11 months, or till regular appointment was made, whichever was earlier, on the previous terms and conditions. This extension was also granted after the same had been approved by the Syndicate and as per the orders passed by the Vice Chancellor of the respondent University.

In pursuance of such extension in service granted in favour of the petitioner, she discharged her duties as Principal of the respondent College, but on the expiry of the second extended period, no further extension was granted to her and instead, through the impugned order dated 27.03.2014 (Annexure P-6), respondent no. 3, who was substantively working as Principal, Shaheed Ram Singh Pathania Memorial Guru Nanak Dev University College, Niari, District Pathankot, was given additional charge to work as Principal of the respondent College. The narration of facts would not be complete without noticing that the respondent University has, through advertisement no. 3 of 2014, invited applications for filling up the post of Principal of respondent College on regular basis and the present status, as informed to the Court by the learned counsel appearing on behalf of the respondent University, is that the applications received in pursuance

to the advertisement are under scrutiny. The Court has further been informed that the regular appointment would be made shortly.

In view of the above facts, the petitioner has approached this Court through the present writ petition for the earlier referred reliefs.

I have heard learned counsel for the petitioner as also learned counsel for the respondent University. Respondent no. 3 was served but remained unrepresented.

Learned counsel appearing on behalf of the petitioner has submitted that the petitioner, who was working on contractual basis, could not be replaced by respondent no. 3 by giving him additional charge of the post in question. It is argued that when regular appointment was round the corner, the replacement of the petitioner, in the manner the same has been done, was uncalled for.

Per contra, learned counsel appearing on behalf of the respondent University vehemently opposed the writ petition and argued that the action of the respondent University could not be faulted with as the action of the respondent University was as per the terms of the appointment of the petitioner. She was relieved after her period of service had expired. In support of his arguments, learned counsel for the respondent University relied upon the following judgments :-

- 1. Vidyavardhaka Sangha and another vs. Y. D. Deshpande and others reported as 2006 (12) SCC 482.**

2. **Binny Ltd. and another vs. V. Sadasivan and others** reported as **2005 (6) SCC 657.**
3. **Secretary, State of Karnataka and others vs. Umadevi and others** reported as **2006 (3) RSJ 572.**
4. **Anil Kumar and others vs. State of Haryana and others** reported as **2000 (3) S.C.T. 896.**

The respondent College is a constituent College of the respondent University. The petitioner was appointed on contractual basis for a period of 11 months or till regular appointment was made, whichever was earlier. Thereafter, her services were extended twice over for a period of 11 months at a time. Admittedly, the initial appointment as also the extensions were after grant of approval to the same by the Syndicate of the respondent University and that the work and conduct of the petitioner was throughout unblemished.

It is further the undisputed position that the process for filling up the post in question on regular post is on and the same would be completed shortly.

In the peculiar facts of the case in hand, when the petitioner had already served the respondent College for about three years, her service being unblemished and regular selection was just round the corner, it was not proper on the part of the respondent University, at that stage, to replace her by giving respondent no. 3 additional charge of the post being held by

the petitioner.

Regular and sanctioned posts like the post in question should be filled up and manned by employees, who are selected through regular process. Only a regular selection process attracts the best possible talent and requires the authorities to follow the selection process, as laid down in the applicable rules. There can be a situation where regular selection is delayed for some justifiable reason and in such a situation, appointments can be made only as a stop gap arrangement on contractual, adhoc or temporary basis. The stop gap arrangement should be for the least possible period and the employer in question should make all efforts to fill up the regular and sanctioned post/posts on regular basis as soon as possible. In the integrum, it is desirable that an employee appointed on contract or adhoc basis, should continue till regular appointments are made, of course subject to his or her good performance, existence of work and fitness.

Replacement of adhoc or temporary employees with another set of adhoc or temporary employees was frowned upon by Apex Court in **State of Haryana and others etc. vs. Piara Singh and other etc.** reported as **AIR 1992 SC 2130**, wherein it was observed as under :-

“25. Secondly, an ad hoc or temporary employee should not be replaced by another ad hoc 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.”

It deserves notice that the judgment in the case of **Piara Singh's (supra)** was considered by the Apex Court in **Umadevi's (supra)** as under :-

*“20. We may now consider, **State of Haryana Vs. Piara Singh and Others** [1992) 3 SCR 826]. There, the court was considering the sustainability of certain directions issued by the High Court in the light of various orders passed by the State for the absorption of its ad hoc or temporary employees and daily wagers or casual labour. This Court started by saying:*

"Ordinarily speaking, the creation and abolition of a post is the prerogative of the Executive. It is the Executive again that lays down the conditions of service subject, of course, to a law made by the appropriate legislature. This power to prescribe the

conditions of service can be exercised either by making rules under the proviso to [Article 309](#) of the Constitution or (in the absence of such rules) by issued rules/instructions in exercise of its executive power. The court comes into the picture only to ensure observance of fundamental rights, statutory provisions, rules and other instructions, if any governing the conditions of service"

This Court then referred to some of the earlier decisions of this Court while stating: "The main concern of the court in such matters is to ensure the rule of law and to see that the Executive acts fairly and gives a fair deal to its employees consistent with the requirements of Articles 14 and 16. It also means that the State should not exploit its employees nor should it seek to take advantage of the helplessness and misery of either the unemployed persons or the employees, as the case may be. As is often said, the State must be a model employer. It

is for this reason, it is held that equal pay must be given for equal work, which is indeed one of the directive principles of the Constitution. it is for this very reason it is held that a person should not be kept in a temporary or ad hoc status for long. Where a temporary or ad hoc appointment is continued for long the court presumes that there is need and warrant for a regular post and accordingly directs regularization. While all the situations in which the court may act to ensure fairness cannot be detailed here, it is sufficient to indicate that the guiding principles are the ones stated above."

This Court then concluded in paragraphs 45 to 50:

"The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an ad hoc or temporary appointment to be made. In such a situation,

effort should always be to replace such an ad hoc/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 ad hoc/temporary employee.

Secondly, an ad hoc or temporary employee should not be replaced by another ad hoc 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.

Thirdly, even where an ad hoc 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.

An unqualified person ought to be appointed only when qualified persons are not available through the above processes.

If for any reason, an ad hoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularization provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the

reservation policy of the State "

With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts? This Court, in our view, is bound to insist on the State making regular and proper recruitments and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent -- the distinction between regularization and making permanent, was not emphasized here -- can only encourage the State, the model employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. With respect, the direction made in paragraph 50 of Piara Singh (supra) are to some extent inconsistent with the conclusion in paragraph 45 therein. With great respect, it appears to us that the last of the directions clearly runs counter to the

constitutional scheme of employment recognized in the earlier part of the decision. Really, it cannot be said that this decision has laid down the law that all ad hoc, temporary or casual employees engaged without following the regular recruitment procedure should be made permanent.”

From the above, it is clear that the Constitution Bench, in the case of Umadevi (supra) only disagreed with the last direction in Piara Singh's case (*supra*) which pertained to regularization of adhoc, temporary or casual employees . The direction in Piara Singh's (supra) that adhoc or temporary employees should not be replaced by other adhoc or temporary employees and should only be replaced by regularly selected employees was also considered but not disagreed with.

In Commissioner Kendriya Vidyalaya Sangathan and others vs. Anil Kumar Singh and others reported as (2003) 10 SCC 284, the Apex Court has held as under :-

“The employer Commissioner Kendriya Vidhalaya Sangathan is in appeal against the judgment of the Madhya Pradesh High Court in Writ Petition No.

782/1995 which was upheld in appeal by the Division Bench. The respondents had been appointed on contractual basis and just before the expiry of the contractual period, they approached the High Court with the prayer that their services should not be terminated until the posts are filled up by a process of regular recruitment. The learned Single Judge by his order dated 6th April, 1995 disposed of the Writ Petition following an earlier judgment of the said Court in S.P. Upadhyay's case directing that the Writ Petitioners should be allowed to continue till the posts are filled up by process of regular recruitment, and those petitioners should be allowed to compete with other candidates if they apply for selection and if they are otherwise not disqualified. The High Court also took additional care by indicating that the Writ Petitioners cannot claim any additional advantage by virtue of their experience by

working for the contractual period. In the aforesaid premises, we do not find any infirmity with the said- judgment of the High Court to be interfered with by this Court. The expression "if they are otherwise not disqualified" would obviously mean they must have the necessary qualifications, as required, under the relevant Rules for being appointed as a Teacher and then they have to compete along with others for adjudication of their merit for being appointed. The apprehension of the employer that the impugned judgment directs condonation of the age is wholly unfounded.

2. In the aforesaid premises, we do not find any justification for interference with the direction given by High Court. Civil Appeals are accordingly dismissed."

To the same effect is another decision of the Apex Court in

Hargurpartap Singh vs. State of Punjab reported as **2007 (13) SCC**

292, wherein it has been held as under :-

“3. We have carefully looked into the judgment of the High Court and other pleadings that have been put forth before this Court. It is clear that though the appellants may not be entitled to regular appointment as such it cannot be said that they will not be entitled to the minimum of the pay scale nor that they should not be continued till regular incumbents are appointed. The course adopted by the High Court is to displace one ad hoc arrangement by another ad hoc arrangement which is not at all appropriate for these persons who have gained experience which will be more beneficial and useful to the colleges concerned rather than to appoint persons afresh on ad hoc basis. Therefore, we set aside the orders made by the High Court to the extent the same deny the claim of the appellants of minimum pay scale and continuation in service till regular incumbents are

appointed. We direct that they shall be continued in service till regular appointments are made on minimum of the pay scale.”

A Division Bench of this Court in **Malwinder Singh Mali vs. Punjabi University, Patiala** reported as **2000 (1) SLR 800** has held as under :-

“6. The other prayer made in the writ petition is for quashing the order by which the services of the petitioner were terminated and the term of his extension curtailed till 31.12.1998. We find merit in this grievance of the petitioner. It has time and again been laid down by this Court that the services of an ad hoc/temporary employee can be terminated only on account of unsatisfactory work or if the post is not available or when a regularly selected candidate becomes available for appointment. The services of an ad hoc employee cannot be terminated without any reason when the post continues to exist and

the University itself has re-advertised the same to fill it up on regular basis. An ad hoc employee cannot be allowed to be replaced by another ad hoc employee or by some one on officiating basis as that would smack of arbitrariness. Some good reason has to be stated for terminating the services of an ad hoc-temporary employee. The University being a statutory body is a 'State' for purposes of [Article 12](#) of the Constitution and every action of it should be guided by public interest and if it is shown that the exercise of power is arbitrary, unjust or unfair, the same will have to be struck down. We see no reason why the services of the petitioner should have been terminated when the post was available and the University having granted extension to his tenure had to curtail the same when the Syndicate decided in the same very meeting that the post be filled up and it constituted a selection committee for the purpose. In the

circumstances, the petitioner has a right to continue as a Public Relations Officer on ad hoc-temporary basis till the University makes a regular selection. Since the services of the petitioner were terminated without assigning any valid reason the same is held to be illegal and arbitrary and is hereby quashed. The view that we have taken finds support from the judgments of this Court in Rajni Bala's case (supra) and Balwan Singh's case (supra)."

To the same effect is another Division Bench judgment of this Court in **Sangeeta Sharma vs. Union Territory of Chandigarh** reported as **2005 (3) SLR 775**, wherein it has been held as under :-

"9. Accordingly, we dispose of the present writ petitions with a direction to the respondents to continue the contract employee till such time, persons selected on regular basis join and in a situation where a decision has been taken not to fill up the vacancies on regular basis, it would be open for the administration not to continue the

contractual employees any further.”

The same position of law was followed in the case of **Rajwinder Kaur and others vs. State of Punjab etc.b – CWP No. 7882 of 2004, decided on 11.04.2005**, in which a Division Bench of this Court has held as under :-

“8. *The first issue involved in this case is, whether or not the petitioner should be allowed to continue as Lecturers (Guest Faculty) on part – time basis. Keeping in mind the order passed by the Supreme Court in Hargurpratap Singh's case (fully extracted above), we consider it just and appropriate to allow the respondents to dispense with the services of the petitioners, in case their services are no longer required. It will, however, not be opened to the respondents to substitute the petitioners with others for the same purpose for which the petitioners have/had been engaged. As a matter of clarification, it may be stated that the nomenclature of the substitutes would be irrelevant, in other words,*

engagement of employees as a matter of temporary arrangement (ad hoc, stop – gap, current – duty, part – time, contractual, temporary etc.) so as to replace the petitioners, would not be permissible.”

A Division Bench of Delhi High Court, in **Narinder Singh Ahuja and others vs. The Secretary, Ministry of Health and Family Welfare and others - W.P. (C) 1741/2014 – decided on 03.11.2014**, has held as under :-

“15. The facts of this case clearly reveal that even though the work is to be performed by contractual employees, the reason for discontinuance of the petitioners' employment is not their replacement with regular appointees, but instead, with another set of contractual employees. The state/respondents cannot, in the circumstances of this case, say that discontinuance of such employment cannot be gone into by the Court because the petitioners were aware that their contracts ended.

16. For the above reasons, this court is of opinion that the CAT erred in law, in holding that the petitioners could not complain against the discontinuance of their contractual employment. Accordingly, a direction is issued to the respondents to continue the petitioners in contractual employment on annual renewal basis, till the currency of the RNTCP scheme/project in 2017. An appropriate consequential order shall be issued by the respondents within eight weeks from today.”

To the same effect is another recent judgment of Delhi High Court in Abhinav Chaudhary and others vs. Delhi Technological University and another - W.P. (C) 3512/2014 – decided on 20.01.2015, wherein it has been held as under :-

“5. In view of the above, the case of the petitioners clearly falls within the ratios of the judgments of the Supreme Court in the cases of Piara Singh and Ors., Umadevi and Ors. and Mohd. Abdul Kadir and Anr. (all Supra) and since one contractual employee

cannot be replaced by other contractual employee, and which action will show gross arbitrariness on the part of the respondent no.1, the present writ petition is allowed and respondents are restrained from in any manner terminating the services of W.P.(Q) Nos.3512/2014 & 3834/2014 Page 6 of 7 the petitioners from the contractual posts of Assistant Professors at which they are working with the respondent no.1/employer.”

The Rajasthan High Court, in the case of **Ambra Bhambio vs. State of Rajasthan and others** reported as **2014 (10) RCR (Civil) 3018**, after scrutinizing the entire law on the subject, held as under :-

“18. *Perusal of the para quoted above reveals that arrangement of substitution of one set/replacement of temporary/contractual/ad hoc employees by another set is deprecated by the Hon'ble Supreme Court. This court, by interim order, restrained the respondents to replace one set of contractual employees by*

another. I find aforesaid direction to be in consonance to the judgment of the Apex Court. If the respondents are not in need of an employee, they can very well discontinue them or if they get regularly selected candidates, the contractual employee can be discontinued even then. However, no justification would remain if one set of contractual employee is replaced by another.”

The judgments cited by the counsel for respondent University would not further its case as in **Anil Kumar's case (supra)**, the appointment was not against a regular post as in the case in hand. The Division Bench primarily followed a Full Bench judgment of this Court in the case of **S. K. Verma vs. State of Punjab** reported as **1979 (2) Services Law Reporter 164**, wherein also, the appointment was against a temporary post. The judgments of the Apex Court in **Vidyavardhaka Sangha's case (supra)**, **Binny Ltd.'s case (supra)** and **Uma Devi's case (supra)**, cited by learned counsel for the respondent University, do not apply to the facts of the case in hand as in those cases, the issue of replacement of the contractual/temporary/ad hoc employees with another set of contractual/temporary/ad hoc employees was not considered. The

petitioner herein also does not claim regularization of her services.

There is yet another aspect of the matter. Since 27.03.2014, respondent no. 3, who is substantively working as Principal in Shaheed Ram Singh Pathania Memorial Guru Nanak Dev University College, Niari, District Pathankot, has been asked to discharge duties as Principal of the respondent College on additional charge basis. A Principal is like a Captain of a ship. He plays pivotal role in shaping the future of the students. The job of a Principal of a College requires whole time attention. The above arrangement would certainly dilute the attention that he would give to either of the colleges. It is undesirable that one person should be allowed to work as a Principal of two Colleges for long periods, which is about 1½ years in the case in hand.

In view of the peculiar facts of the case in hand and the position of law as extracted above, the impugned order dated 27.03.2014 (Annexure P-6) is quashed. The respondent University is directed to permit the petitioner to discharge her duties as Principal of the respondent College on the terms and conditions of her initial appointment till the regular selection, for which advertisement has already been issued, is finalised. The advertisement for making regular selection is dated 27.10.2014. Already over eight months have elapsed and in view of such unexplained delay in finalising the regular appointment, I consider it proper to direct the respondent University to make appointment on regular basis on the post in

question expeditiously, but in any case, not later than three months from the date of receipt of the certified copy of this order.

The writ petition stands allowed in the above terms.

No costs.

(DEEPAK SIBAL)
JUDGE

Pronounced On : 09.07.2015
monika