

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

+ **W.P.(C) Nos.3512 /2014 & 3834/2014**

% **20th January, 2015**

1. **W.P.(C) No.3512/2014**

ABHINAV CHAUDHARY & ORS.Petitioners

Through: Ms. Rashmi Chopra, Advocate.

VERSUS

DELHI TECHNOLOGICAL UNIVERSITY & ANR.

Respondents

Through: Ms. Latika Chaudhary, Advocate.

2. **W.P.(C) No.3834/2014**

MEHA JOSHIPetitioner

Through: Mr. G. Joshi, Advocate.

VERSUS

DELHI TECHNOLOGICAL UNIVERSITY & ANR. Respondents

Through: Ms. Latika Chaudhary, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

W.P.(C) No.3512/2014

1. Five petitioners have filed this writ petition under Article 226 of the Constitution of India impugning the action of the respondent

no.1/employer/Delhi Technological University of refusing to extend the contractual appointments of the petitioners and issuing a fresh advertisement for fresh appointment for contractual period for the posts in question. Petitioners are working at the posts of Assistant Professors with the respondent no.1 since the year 2011 in terms of contractual appointment letters one of which is at page 66 of the writ petition paper book. Other petitioners have similar letters of appointment. Petitioners are working in the pay band of Rs.15,600-39,000 i.e Rs.15,600 + annual grade pay of Rs.6,000 + Dearness Allowance (DA) as applicable. Petitioners are not entitled to and do not claim any other monetary emoluments except the aforesaid pay band + DA as provided in the contractual appointment letters. Petitioners also do not claim regularization and they also do not claim any equality with any other permanent employee of the respondent no.1.

2. The only grievance of the petitioners is that a contractual appointee cannot be replaced by any other contractual appointee. Petitioners claim that no doubt petitioners cannot seek regularization, however, it is argued that one contractual employee cannot be replaced by another contractual employee on more or less the same terms. Reliance is placed upon the judgment of the Supreme Court in the case of *State of Haryana*

and Ors. etc. etc. Vs. Piara Singh and Ors. etc. etc. (1992) 4 SCC 118

which holds that one work charged/casual employee/daily worker cannot be replaced by any worker of same category. It is argued that the ratio of the judgment of the Supreme Court in the case of ***Piara Singh and Ors. (supra)*** has been approved by the Supreme Court in the Constitution Bench judgment of the Supreme Court in the case of ***Secretary, State of Karnataka Vs. Umadevi & Ors. (2006) 4 SCC 1***. The judgment in the case of ***Piara Singh and Ors. (supra)*** is referred to in paras 23 to 25 of the judgment in the case of ***Umadevi (supra)***. In para 26, the Constitution Bench in the case of ***Umadevi (supra)*** only disagreed with that direction of ***Piara Singh and Ors.'s case (supra)*** which requires regularization of *ad hoc* or temporary or casual employee. In para 25 of the judgment in the case of ***Umadevi (supra)*** para 46 of the ***Piara Singh and Ors.'s case (supra)*** is referred to and which para 46 states that an *ad hoc* or temporary employee should not be replaced by any other *ad hoc* or temporary employee and such an employee can only be replaced by a regularly selected employee and which is to avoid any arbitrary action on the part of the appointing authority.

3. The ratio and spirit of the judgments of the Supreme Court in the cases of ***Piara Singh and Ors. (supra)*** and ***Umadevi (supra)*** has been

applied and reiterated by the Supreme Court in the judgment in the case of ***Mohd. Abdul Kadir and Anr. Vs. Director General of Police, Assam and Ors. (2009) 6 SCC 611*** and which states that a person who is employed under the scheme has to continue in the employment till the continuation of the scheme and such a person's services cannot come to an end/ terminated before the expiry of the scheme except of course on disciplinary grounds or unsatisfactory services or medical grounds or attaining the normal age of retirement. Paras 17 and 18 of the judgment in the case of ***Mohd. Abdul Kadir and Anr. (supra)*** are relevant and the same read as under:-

“17. When the ad hoc appointment is under a scheme and is in accordance with the selection process prescribed by the scheme, there is no reason why those appointed under the scheme should not be continued as long as the scheme continues. Ad-hoc appointments under schemes are normally co-terminus with the scheme (subject of course to earlier termination either on medical or disciplinary grounds, or for unsatisfactory service or on attainment of normal age of retirement). Irrespective of the length of their ad hoc service or the scheme, they will not be entitled to regularization nor to the security of tenure and service benefits available to the regular employees. In this background, particularly in view of the continuing Scheme, the ex-serviceman employed after undergoing selection process, need not be subjected to the agony, anxiety, humiliation and vicissitudes of annual termination and re-engagement, merely because their appointment is termed as ad hoc appointments.

18. We are therefore of the view that the learned Single Judge was justified in observing that the process of termination and re-appointment every year should be avoided and the appellants should be continued as long as the Scheme continues, but purely on ad hoc

and temporary basis, co- terminus with the Scheme. The Circular dated 17-3-1995 directing artificial breaks by annual terminations followed by fresh appointment, being contrary to the PIF Additional Scheme and contrary to the principles of service jurisprudence, is liable to be is quashed.”

(underlining added)

4(i) A reference to the new advertisement which has now been issued by the respondent no.1 for appointment to the posts of Assistant Professors for contractual period, shows that the persons to be appointed in terms of the impugned advertisement are Assistant Professors and they are to be employed on the same monetary emoluments on which the present petitioners-Assistant Professors are working i.e there is no change in the monetary emoluments with respect to new Assistant Professors who are sought to be appointed on contractual terms by the respondent no.1. The only difference is that the new appointments are for 11 months instead of 9 months and which difference according to counsel for respondent no.1 is a new term and therefore it is argued that the present is not a case where one contractual employee is sought to be replaced by another contractual employee in view of the difference of the term of 9 months and 11 months.

(ii) In my opinion, the difference of two months i.e between 9 months and 11 months and salary with respect to the additional period of two months in the new contractual post is not such a substantial difference

for the respondent no.1 to contend that one contractual employee can be replaced by other contractual employee. For the sake of argument let us take that the case was a case of replacing a contractual employee of 11 months with a contractual employee for a substantially large period of lets say three years or more, then, may be in such a case depending on facts of such a case, the employer could contend that terms and conditions are substantially different and consequently it would not be a case where a contractual employee is sought to be replaced by a similar other contractual employee. In my opinion, arguing that two months difference makes the petitioners' employment different with the persons who have been selected pursuant to the impugned advertisement dated 28.4.2014/1.5.2014, is an argument really one of gross arbitrariness on the part of the employer/respondent no.1 and which needs to be adversely commented upon by this Court.

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

the petitioners from the contractual posts of Assistant Professors at which they are working with the respondent no.1/employer. Of course, this will not disentitle the respondent no.1 to appoint any additional Assistant Professors with the respondent no.1 in accordance with its applicable rules or issue fresh advertisements having contractually substantially different terms than what the petitioners are presently working at.

6. The writ petition is allowed and disposed of in terms of the aforesaid observations, leaving the parties to bear their own costs.

W.P.(C) No.3834/2014

7. In view of the reasoning given while allowing W.P.(C) No.3512/2014, this writ petition will also stand similarly allowed.

JANUARY 20, 2015
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VALMIKI J. MEHTA, J