

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.12069 of 2015 (O&M)

Date of Decision: 06.02.2017

Union Public Service Commission	VS.	... Petitioner
Sunita Sharma & Ors.		... Respondents

(2) CWP No.12090 of 2015 (O&M)

Union Public Service Commission	VS.	... Petitioner
Sarita Sharma & Ors.		... Respondents

(3) CWP No.12091 of 2015 (O&M)

Union Public Service Commission	VS.	... Petitioner
Pooja Sareen & Ors.		... Respondents

(4) CWP No.12122 of 2015 (O&M)

Union Public Service Commission	VS.	... Petitioner
Meeta Kaushik & Ors.		... Respondents

(5) CWP No.12313 of 2015 (O&M)

Union Public Service Commission	VS.	... Petitioner
Itinder Kaur & Ors.		... Respondents

(6) CWP No.12429 of 2015 (O&M)

Union Public Service Commission	VS.	... Petitioner
Prabhjot Kaur & Ors.		... Respondents

(7) CWP No.12382 of 2015 (O&M)

Union Public Service Commission	VS.	... Petitioner
Dr. Aradhana Mehta & Ors.		... Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR.JUSTICE SUDIP AHLUWALIA

Present: Mr. Namit Kumar, Advocate
for the petitioner(s).

Mr. Amandeep Saini, Advocate for respondent No.1

(in CWP Nos.12090, 12313&12382/2015).

Mr. Pankaj Sharma, Advocate
for respondent No.1 (in CWP No.12069/2015).

Mr. Gaurav Rana, Advocate
for respondent No.4 (in CWP No.12429/2015).

Mr. Vikas Bahl, Advocate
for UT Chandigarh(in CWP Nos.12069, 12091 & 12122/2015).

Mr. IPS Doabia, Advocate
for respondent – UT, Chandigarh.

Ms. Ramandeep Kaur, Advocate for
Mr. Samir Rathore, Advocate
for respondent No.3 (in CWP Nos.1429&12429/2015).

Mr. Sukhdev Kamboj, Advocate
for respondents No.1 & 3 (in CWP No.12091/2015)
for respondents No.7, 11, 12, 16, 19, 20 & 23
(in CWP No.12122/2015).

Mr. Bikramjit Aroua, Advocate
for respondent No.22 (in CWP No.12122/2015)

Mr. PC Chaudhary, Advocate
for respondent no.3 (CWP-12122-2015)

Mr. DR Sharma, Advocate
for respondents No.1,2,4&15 (CWP-12122-2015)

SURYA KANT, J.

(1) Union Public Service Commission has preferred these writ petitions to lay challenge to the orders passed by Central Administrative Tribunal, Chandigarh Bench (in short, ‘the Tribunal’) whereby the Commission has been directed to consider the claim of respondent No.1 and other similarly-placed college Teachers appointed on contractual basis for relaxation in age and consequently treat them eligible for the advertised post(s) of Assistant Professor(s). The Tribunal’s order in the lead case i.e. CWP No.12069 of 2015 is dated 20.02.2015 which has been subsequently followed in the connected cases.

The Facts:

(2) The admitted facts are that pursuant to the advertisements issued in the daily newspapers, applications were invited from the candidates “eligible as per UGC norms” to work as Lecturers on contract basis in Government Art and Science Colleges, Chandigarh. One of the such advertisements issued for the academic session 2007-08, followed by the advertisements for subsequent academic sessions have been referred to by counsel for the parties. These advertisements contained subject-wise vacancies in different Government Colleges at Chandigarh.

(3) The private respondents applied in response to these advertisements and they having been selected are working as Lecturers-cum-Assistant Professors on contract basis. It further appears from the documents on record that some of the respondents were appointed on contract basis even in the year 2005 or so. Their appointment letters are also on record.

(4) Chandigarh Administration has formulated the statutory Service Rules known as ‘Government Arts and Science Colleges, Chandigarh (Assistant Professor Group ‘A’ Post) Recruitment Rules, 2011’ (R1). The SCHEDULE appended to these Rules prescribes in Column 7 ‘Age limit for direct recruits’ and it reads as follows:-

“Not exceeding 35 years. (Relaxable for Government servants up to five years in accordance with the instructions or orders issued by the Central Government.

Note 1: The crucial date for determining the age limit shall be the closing date for receipt of applications from

candidates in India (and not the closing date prescribed for those in Assam,.....”

(5) The petitioner-Commission (in short, ‘UPSC’) having received requisition from the Chandigarh Administration advertised various posts of Assistant Professors for appointment in Government Colleges of Chandigarh vide Advertisement No.07/2013. Clause 5(c) of the Advertisement pertains to “Age relaxation for Central Government employees” and it reads as follows:-

The upper age limit is relaxable for Central/UT Govt. servants upto 5 years as per the instructions issued by the Govt. of India from time to time (10 years for persons belonging to Scheduled Castes/Scheduled Tribes and 8 years for persons belonging to Other Backward Classes in respect of the posts reserved for them) in accordance with the instructions or orders issued by the Government of India. A candidate claiming to belong to the category of Central Government servant and thus seeking age relaxation under this para would be required to produce a Certificate in the prescribed pro forma issued after the date of advertisement from his/her employer on the Office letter head to the effect that he/she is a regularly appointed Central Government servant and not on casual/ad hoc/daily wages/hourly paid/contract basis employee. The age relaxation will be admissible to such of the Government servants as are working in the post which are in the same line or allied cadres and where a relationship could be established that

the service already rendered in a particular post will be useful for the efficient discharge of the duties of the post(s) recruitment to which has been advertised. Decision in this regard will rest with the Commission”

(emphasis by us)

(6) It may be seen from the contents of the above reproduced clause that UPSC granted age relaxation upto five years only to “regularly appointed” Central Government servants and not to those who are working on “casual/*ad hoc*/daily wages/hourly paid/contract basis”.

(7) The private respondents were admittedly above 35 years of age on the cut-off date and since UPSC declined to grant age relaxation to the employees working on contract basis, they were rendered overage for the advertised posts. They consequently approached the Tribunal by way of their respective Original Applications which have been allowed vide the impugned orders with a direction to UPSC to consider their claim for relaxation in age in the light of the observations made by the Tribunal in its main order.

Point in Issue

(8) In the light of the facts narrated above, the question which falls for consideration is whether private respondents are entitled to the benefit of relaxation in age in lieu of the service rendered by them on contractual basis or whether the action of UPSC in extending such benefit only to those employees who are working on regular basis, is arbitrary and is hit by Articles 14&16 of the Constitution of India?

(9) There is no discordant that statutory Service Rules notified by Chandigarh Administration prescribe the maximum age limit of 35 years for

appointment to the post of Assistant Professor subject to the relaxation for Government servants upto five years “in accordance with instructions or orders issued by Central Government”. There is thus no express embargo under the Service Rules against granting age relaxation in lieu of the service rendered by a Government servant on contract/*ad hoc* basis, for the Rules are silent in this regard. UPSC has, however, placed on record Central Government instructions dated 02.08.2001 and 23.10.2001 (P5 colly) whereunder the expression ‘Government servants’ has been restricted to mean ‘Central Government employees only’. UPSC has also placed on record memo dated 31.12.2002 (P6) issued by Government of India, Ministry of Personnel, Public Grievance and Pensions, clarifying further that the age relaxation to Government servants applies only to Central Government employees appointed on regular basis according to the relevant recruitment Rules and that “*this benefit will not be admissible to those appointed on short-term on contract or otherwise*”. It was in conformity with these instructions that UPSC in Clause 5(c) of its advertisement denied the benefit of age relaxation to the contractually-appointed employees.

(10) The Tribunal viewed the controversy in the light of various binding judicial precedents, especially the *dictum* of the Constitution Bench in **Secretary, State of Karnataka & Ors. vs. Uma Devi (2006) 4 SCC 1**, and has held that the employees working on *ad hoc* or temporary basis, who have become overage due to the failure of the authorities in initiating the selection process timely, are entitled to compete in the regular selection process.

(11) The contentions made by learned counsel for the parties before us are also hovering around various judicial precedents.

(12) While learned counsel for UPSC heavily relies upon (i) **Union Public Service Commission vs. Girish Jayanti Lal Vaghela & Ors. (2006) 2 SCC 482**; & (ii) **Rajendra Singh Rathore vs. State of Rajasthan & Ors. 2016(1) RLW 14 (Rajasthan High Court)**, learned counsel for the respondents cite (i) **Uma Devi** (supra) and **Union Public Service Commission vs. Dr. Jamuna Kurup & Ors. (2008) 11 SCC 10** as well as the decisions relied upon by the Tribunal.

(13) Since UPSC's claim rests entirely upon the decision rendered in **Girish Jayanti Lal Vaghela**, it is necessary to make a detailed reference to the facts and the principles laid down in that decision.

(14) Girish Jayanti Lal Vaghela was appointed as Drugs Inspector on short-term contract basis for a period of six months from the date of joining or till the date the candidates selected by UPSC joined duty on regular basis whichever was earlier. His appointment was renewed after every six months with short breaks and it continued for over five years. UPSC advertised the posts of Drugs Inspector for regular selection on 24.03.2001. The Recruitment Rules framed under *proviso* to Article 309 of the Constitution prescribed upper age limit of 30 years for a direct recruit, which was relaxable for the Government servants upto five years in accordance with the instructions/orders issued by the Central Government. Girish Jayanti Lal Vaghela had become overage by two years at the time when the advertisement was issued and consequently he claimed age relaxation. Since there was no response, he firstly approached the Central Administrative Tribunal and then the Bombay High Court which allowed his writ petition and directed to issue age relaxation certificate with a further direction to UPSC to consider his claim for selection to

the post of Drugs Inspector. It was in this background that Hon'ble Supreme Court firstly considered the question of employer-employee relationship and explored the true meaning of the expression "contract of service" and "contract for service". After discussing the case-law, the Apex Court concluded that employment under the Government is a matter of status and not a 'contract' even though acquisition of such status may be preceded by a contract, namely, offer of appointment which is accepted by the employee. However, once the appointment is made, the rights and obligations are not determined by contract between the two parties but by Statutory Rules which are framed by the Government in exercise of powers conferred by Article 309 of the Constitution.

(15) Thereafter their Lordships examined the nature of appointment of Girish Jayanti Lal Vaghela who was engaged on contract basis and found as follows:-

“17. It is neither pleaded nor there is any material to show that the appointment of respondent no.1 had been made after issuing public advertisement or the body authorized under the relevant rules governing the conditions of service of Drugs Inspectors in the Union Territory of Daman and Diu had selected him. His contractual appointment for six months was de hors the rules. The appointment was not made in a manner which could even remotely be said to be compliant of Article 16 of the Constitution. The appointment being purely contractual, the stage of acquiring the status of a Government servant had not arrived. While working as a contractual employee respondent no.1 was not governed by

the relevant service rules applicable to Drugs Inspector. He did not enjoy the privilege of availing casual or earned leave. He was not entitled to avail the benefit of general provident fund nor was entitled to any pension which are normal incidents of a Government service. Similarly he could neither be placed under suspension entitling him to a suspension allowance nor he could be transferred. Some of the minor penalties which can be inflicted on a Government servant while they continue to be in Government service could not be imposed upon him nor he was entitled to any protection under [Article 311](#) of the Constitution. In view of these features it is not possible to hold that respondent no.1 was a Government servant.”

(16) It may be seen from the above-reproduced conclusion drawn by the Supreme Court that the writ petitioner in the cited case was held not to be a Government servant as his appointment was neither made after issuing public advertisement nor in accordance with the relevant rules governing the conditions of service of Drugs Inspector. His contractual appointment was found to be *de hors* the Rules. Since he was not held to be a Government servant, the Apex Court further ruled that he was not entitled to seek age relaxation.

(17) In *Dr. Jamuna Kurup's* case (supra), the question which fell for consideration was whether the Ayurvedic doctors appointed on contract basis by the Municipal Corporation of Delhi were entitled to relaxation in age in response to an advertisement issued by the Union Public Service Commission?

(18) The claim for age relaxation for the contractually appointed Ayurvedic doctors was resisted by UPSC on the ground that only permanent or regular employees of MCD were entitled to such benefit. Neither the High Court of Delhi nor the Hon'ble Supreme Court accepted the plea of UPSC. The Apex Court turned down the U.P.S.C.'s contention, laying down as follows:-

“13. The term 'employee' is not defined in the Delhi Municipal Corporation Act, 1957. Nor is it defined in the advertisement of UPSC. The ordinary meaning of 'employee' is any person employed on salary or wage by an employer. When there is a contract of employment, the person employed is the employee and the person employing is the employer. In the absence of any restrictive definition, the word 'employee' would include both permanent or temporary, regular or short term, contractual or ad hoc. Therefore, all persons employed by MCD whether permanent or contractual will be 'employees of MCD'. The respondents who were appointed on contract basis initially for a period of six months, extended thereafter from time to time for further periods of six months each, were therefore, employees of MCD, and consequently, entitled to the benefit of age relaxation. If the intention of MCD and UPSC was to extent the age relaxation only to permanent employees, the advertisement would have stated that age relaxation would be extended only to permanent or regular employees of MCD or that the age relaxation would be extended to

employees of MCD other than contract or temporary employees. The fact that the term 'employees of MCD' is no way restricted, makes it clear that the intention was to include all employees including contractual employees. Therefore, we find no reason to interfere with the judgment of the High Court extending the benefit of age relaxation."

(19) The contractual appointees were thus held entitled to the benefit of age relaxation being 'employees of MCD' though it was unequivocally held that if the advertisement restricts the benefit of age relaxation to permanent or regular employees then such a condition can be legitimately justified.

(20) In **Uma Devi's** case (supra), the Constitution Bench considered the perceived right of *ad hoc*/temporary employees for regularization of their services on the premise whether having worked as such for a sufficient long period, such employees have acquired an enforceable right for absorption on regular basis? Hon'ble Supreme Court negated the plea of *ad hoc*/temporary employees and has authoritatively ruled that regularizing *ad hoc*/temporary services would mean that the State is permitted to perpetuate an illegality in the matter of public employment and that it would be a negation of the Constitutional scheme of equality enshrined in Articles 14 & 16 of the Constitution of India. Nevertheless, in the case of claim of employees of Commercial Taxes Department, Hon'ble Supreme Court though turned down their claim for regularization of services but by invoking its powers under Article 142 of the Constitution so as to do justice to them, held that such *ad hoc*/temporary employees "*will be allowed to compete, waiving the age restriction imposed for the recruitment and giving some weightage for their*

having been engaged for work in the Department for a significant period of time”.

(21) The case law discussed above spells out that where the contractual appointment has not been made by way of a transparent mode of recruitment consistent with the Recruitment Rules, the appointee does not acquire the status of ‘Government servant’ and thus cannot claim the benefit of age relaxation. Similarly, where the advertisement on age relaxation does not specify so, the classification between ‘regular’ or ‘*ad hoc*/temporary’ Government servants is uncalled for as it defeats the very purpose of age relaxation. Further where peculiar facts and circumstances so warrant, the Court can exercise its discretionary jurisdiction to do complete justice and direct the authorities to consider the grant of age relaxation.

(22) Applying the above summarized principles to the facts and circumstances of the cases in hand, we are satisfied that no interference with the order(s) passed by the Tribunal is called for. We say so for the reasons that firstly, most of the respondents are working on *ad hoc*/contract basis for the last 10/12 years. Their contractual employments are not protected under any Court order rather they have been allowed to continue as such by the Chandigarh Administration at its own. Secondly, there is nothing on record to suggest that there were Recruitment Rules formulated by Chandigarh Administration at the time when the private respondents were appointed on *ad hoc*/contract basis. These Rules were notified in the year 2011, namely, much after the appointment of private respondents. Thirdly, the respondents were appointed in conformity with Articles 14&16 of the Constitution, through an open competition and by inviting applications by way of public advertisements. The

appointment of none of them can be termed as a back-door entry. Fourthly, it has come on record from the averments made in preliminary submissions No.(2) of the written statement filed by the Chandigarh Administration before the Tribunal that requisition for filling up some of the posts of Lecturer (including one post of Lecturer/Assistant Professor in Dance) was sent to UPSC in the year 2003 but the Commission returned the requisition on 13.01.2004 asking the administration to modify its Recruitment Rules and bring them in conformity with the UGC Regulations as notified on 31.07.2002. The Chandigarh Administration took more than 8 years in notifying the new Recruitment Rules of 2011 and 10 years in sending fresh requisition to the Commission. The red-tapism in the Chandigarh Administration has led to complete denial of even a single opportunity to the private respondents to compete for regular selection. Thus, it will be wholly unjust and iniquitous to say that the private respondents cannot show their worth for regular appointment even once in their life time because they have become overage due to the inordinate delay not attributable to them at all. Sixthly, the Government of India also needs to re-visit its administrative decision of restricting the benefit of age relaxation only in favour of regular employees. Ordinarily, a person who is in regular employment might not be keen to compete for yet another regular post save where the post occupied by him/her is of a lower status. On the other hand, the *ad hoc*/temporary employees who have been appointed through public advertisement or Employment Exchange would always be eager to compete for regular selection for the security of tenure. If such employees are deprived of the opportunity to compete at the whims and fancies of the authorities, it will be travesty of justice and denial of equal

opportunity to compete for public employment and would thus be hit by Articles 14 & 16 of the Constitution unless the tearing effect of discrimination is wiped out by granting age relaxation to them.

(23) For the foregoing reasons, we do not find any merit in these writ petitions and the same are accordingly dismissed.

(Surya Kant)
Judge

06.02.2017
vishal shonkar

(Sudip Ahluwalia)
Judge

1. Whether Speaking?
2. Whether Reportable?

Yes
Yes