

CWP No.18071 of 2015 (O&M)

[1]

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

**CWP No.18071 of 2015 (O&M)
Date of decision:22.11.2017**

Ankur Deswal and others

...Petitioners

Versus

Secretary to His Excellency, Governor of Haryana and others ...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Sajjan Singh, Advocate,
for the petitioners.

Mr. Sharad Kumar Yadav, DAG, Haryana.

Mr. Arvind Seth, Advocate,
for CDLU.

Mr. Vikas Dhull, Advocate, for
Mr. Amit Khatkar, Advocate, for respondent no.5 (BCI).

Mr. S.K.Bawa, Advocate,
for respondent no.6.

Rakesh Kumar Jain, J.

The petitioners have prayed for the issuance of a writ in the nature of *mandamus* seeking a direction to respondents no.1 to 4 to fill up the vacant posts of Teaching Faculty in the Department of Laws of the Chaudhary Devi Lal University, Sirsa (hereinafter referred to as the "University").

The University is an autonomous institution established under the Chaudhary Devi Lal University Sirsa Act, 2003 (hereinafter referred to as the "Act"). As per the reply filed by the Joint Secretary to Govt. of Haryana, Higher Education Department, the Vice Chancellor of the University is the Principal Executive and Academic Officer of the University and exercises general supervision and control over the affairs of

the University and the State Government has no interference in the recruitments made by the University but has a limited control in respect of the matters directly related to finance as provided in the Act.

The Registrar of the University had filed the affidavit dated 10.01.2017 pursuant to an order passed by this Court on 02.12.2016, disclosing that there are total 10 permanent sanctioned posts in the Department of Laws but against these sanctioned posts, only 4 faculty members are working on permanent basis and one Associate Professor working on regular basis has been promoted as Professor. However, it is averred that 9 faculty members are working on contract basis in the Department of Laws.

The Registrar of the University has filed another affidavit dated 19.09.2017 pursuant to the order dated 17.08.2017, in which the following averments have been made:-

- “1. That the above noted writ petition is pending in this Hon'ble Court and is fixed for hearing on 20.09.2017.
2. That on 17.08.2017, the Hon'ble Court has issued the following directions:

“This petition is filed by five students of Department of Law of Chaudhary Devi Lal University, Sirsa seeking a direction to respondents No.1 to 4 to fill up the vacant posts of teaching faculty in law department of the university.

Learned counsel for the petitioner has pointed out that there are total 10 sanctioned posts of Teaching Faculty i.e. One post of Professor, three posts of Associate Professors and six posts of Assistant Professors out of which one post for Professor, two posts for Associates Professors and three for Assistant Professor are still laying vacant.

Learned counsel for the university has filed

affidavit of Registrar, University in which it is mentioned that there are 04 regular faculties in Department of Law and 09 are working on contractual basis. Learned counsel for the respondent is unable to answer as to why the university has not filled up the vacant posts.

Let an affidavit of Registrar be filed on or before the next date of hearing. An enough time has been passed, the hearing of the case be deferred to 31.08.2017.”

3. That due to curfew and administrative decision of closing of institution on account of Dera Sacha Sauda crises, on 31.08.2017, request has been made for time and accordingly the Hon'ble Court has adjourned the case for 20.09.2017 for compliance of orders dated 17.08.2017.
4. That in compliance of the orders of the Hon'ble Court, it is submitted that the University has continuously made the efforts to fill up the vacant teaching posts in Department of Law and advertised the same from time to time as per the regulations of UGC. But due to change in qualifications and other norms of teaching posts, the advertisement Nos. E-1/2008/E-1/2009, E-1/2010 & E-3/2010 have been cancelled and the University has published an advertisement bearing No. ET-2/2014 for the recruitment of all vacant teaching posts for various Departments including six posts of Department of Law. Further, with regard to the above advertisement, interviews were scheduled for 26.08.2014 but could not be held due to enforcement of model code of conduct and hence postponed. Further, the Government has imposed ban on recruitment in the State (as published in various News Papers). Since the appointment of regular faculty for the department of law is the mandatory condition, keeping in view the guidelines of the BCI., therefore, the University sent a D.O. letter to the Director General Higher Education, Haryana, Panchkula bearing No. 7809 dated 07.11.2014 vide which it was requested that the Additional Chief Secretary, Finance Department, Government of Haryana to accord permission to conduct

the interviews for the posts of Law faculty. Further, a reminder has also been sent vide D.O. letter No. 10450-51 dated 24.12.2014. The University has received a letter from the office of DGHE, Haryana, Panchkula vide their Memo dated 20.01.2015 vide which it was intimated that the State Government has decided to grant permission for conducting the interviews in the department of Law. The University has taken the immediate action on the said letter and fixed the interviews for the vacant posts of Professor and Associate Professor on 20.2.2015 for which the selection criteria was also finalized as per UGC guidelines 2010. The interviews for the posts of Assistant Professor in law could not be fixed as the short listing criteria of the candidates for the said posts was not finalized and it was ordered to obtain the same from KU, Kurukshetra and MDU, Rohtak. However, the interview fixed on 20.2.2015 had to be postponed and could not be held. The interviews for the posts of Professor and Associate Professor of the Department of Law were fixed again for 26.8.2015. The interview letters to the concerned candidates in this regard were also sent. But the said interviews could not be held on said date due to certain administrative reasons. Moreover, it is also a fact that a civil suit no.72-C of 2015 titled as Dr. Rajesh Kumar Malik Vs. CDLU, Sirsa has also been filed and is pending in the Hon'ble Civil Court, Sirsa regarding the applicability of API score performa prescribed for selection and promotion under CAS as per UGC guidelines 2010. The said case was instituted on 09.06.2015 and directions to maintain the status quo were issued from date to date. After this finally the interim orders were passed on 10.02.2016 to further process the matter as per UGC guidelines 2010 amended with guidelines 2013 of UGC. Accordingly, the entire criteria had to be revisited. But in appeal of the University against the said interim order, the Hon'ble Distt. Court Sirsa has vacated the above said orders vide decision dated 04.07.2016. Thereafter, the University has promoted one Associate Professor of Law as Professor under CAS. However, the Civil Suit is still pending for final decision.

5. That in this way, the serious efforts have been made by the University to fill up the posts in the Department of Law on regular basis but due to one reason or the other as detailed above, the selection process has not been completed so far.

However, the University has engaged the contractual teachers in the Department of Law from time to time as per requirements of the Department. Further, so far as the teaching classes and the interest of the students are concerned, necessary arrangements have been made by the University. It is also pertinent to mention here that in the year 2008, Dr. Harbans was appointed as Professor, who worked upto 07.01.2009. In 2009, Dr. B.P. Singh was selected in Law Department and he joined on deputation as Professor, who worked upto 31.12.2011. In the year 2016, one Associate Professor, Department of Law has been promoted as Professor under CAS. Furthermore, to meet out the teaching requirement, necessary arrangement of qualified contractual teachers has been made by the University from time to time. Presently, four regular teachers and eleven Assistant Professors (on contract) have been appointed for teaching law subjects and non-law subjects. In addition to the above, the University has also assigned the teaching work of Pre-law subjects to regular teachers in the session 2014-15. However, in the session 2015-16 one contractual teacher has been appointed for teaching the subject of English in place of regular teacher. Hence, there are adequate teachers in the Law Department to impart the education. Moreover, the University is taking the matter of appointment of regular teachers and non teaching staff with the Government. It is also important to mention here that sanctioning of teaching and non teaching posts is the exclusive right of the State Government and also appointment on the posts having its own legal and prescribed process and binding circumstances like model code of conduct, sanction of Government and qualifications etc.”

It is admitted, in the aforesaid affidavit, that the appointment of

regular faculty members is a mandatory condition in view of the guidelines framed by the Bar Council of India and, therefore, the University has made efforts to fill up the regular vacancies and sought permission from the Government of Haryana, which was accorded by the Director General Higher Education, Haryana, on 20.01.2015. However, it is also averred that due to one reason or the other, the said posts could not be filled up till date and the faculty members on contract basis are employed against the sanctioned permanent posts.

After hearing learned counsel for the parties and keeping in view the aforesaid facts and circumstances, it is apparent that the University has been making efforts in the past to fill up the permanent sanctioned posts but because of one reason or the other, their efforts have not become fruitful.

Be that as it may, the permanent sanctioned posts have to be filled up by appointing regular incumbents, as admitted by the University itself, in view of the guidelines laid down by the BCI.

In view thereof, the present petition is hereby disposed of with a direction to the University as well as the Director General Higher Education, Government of Haryana, to initiate process to fill up the vacant permanent sanctioned posts in the Department of Laws of the University and complete the same as early as possible, preferably within a period of six months from today.

November 22, 2017
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(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned:	Yes/No
Whether Reportable:	Yes/No