

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CIVIL WRIT PETITION NO.14680 OF 2017

DATE OF DECISION: JULY 26, 2017

Gulab Singh and othersPetitioners

Versus

Board of Governors and anotherRespondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Mr.RK Malik, Senior Advocate with
Mr.Kuldeep Sheoran, Advocate for the petitioners.

Mr.Chetan Mittal, Senior Advocate with
Mr.Udit Garg and Mr.Vivek Singla, Advocates
for the respondent-Institute.

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TEJINDER SINGH DHINDSA, J.

This order shall dispose of Civil Writ Petition No.14680 of 2017 (Gulab Singh & others v. Board of Governors and another), Civil Writ Petition No.14691 of 2017 (Rahul Kapoor & another v. Board of Governors and another) and Civil Writ Petition No.14770 of 2017 (Priyanka & others v. Board of Governors and another) as the issue involved in these three petitions is identical.

2. Petitioners in this bunch of petitions possess the qualification of M.Tech. in their respective disciplines and have worked as Assistant Professors on contractual basis with the Dr.B.R. Ambedkar National Institute of Technology, Jalandhar

(hereinafter to be referred to as 'the respondent') in the years 2013, 2014, 2015, 2016 and even for the Academic Session thereafter and were relieved on 2.6.2017.

3. The precise grievance raised by the petitioners is that the respondent has issued an advertisement No.6 dated 7.6.2017 and in terms of which, applications have been invited for recruitment of faculty on contractual basis with designation as Assistant Professor in different disciplines and the petitioners, as such, apprehend that they would be replaced by another contractual arrangement.

4. The specific prayers raised are;

- i) for the issuance of a writ in the nature of certiorari to quash the action of the respondents not to allow the petitioners to continue till regular appointments are made;
- ii) directions be issued that the petitioners shall not be replaced by fresh contractual employees.

5. Learned counsel representing the petitioners would submit that the initial contractual engagement of the petitioners was in pursuance to the recommendations made by a duly constituted Selection Committee and that the petitioners have been serving since the year 2013 and upto 2.6.2017. The respondent had adopted a practice of relieving the petitioners during summer/winter vacations and the post thereafter was re-advertised to be filled up on contractual basis and, as such, the petitioners, on each occasion, had to apply afresh for renewal of their contractual engagement. It is contended that the work and conduct of the petitioners throughout has been satisfactory. It is

vehemently argued that by virtue of advertisement No.6 dated 7.6.2017, the respondent is adopting the methodology whereby one set of contractual employees is sought to be replaced by a similar arrangement and such proposed action is illegal, unjust, unfair as also unconstitutional. It is argued that since petitioners have been engaged after due advertisement and by following a process of selection, be it on contractual basis, they are vested with a right to continue till such time the regular appointments are made. In support of such contention, reliance is placed upon the judgment of the Apex Court in **Hargurpartap Singh v. State of Punjab, (2007) 13 Supreme Court Cases 292.**

6. Subsequent to filing of the petitions, Annexure P18 was placed on record in Civil Writ Petition No.14680 of 2017 and which was a copy of the Model Recruitment Rules for Faculty of NITs and called the NIT Faculty Recruitment Rules, 2011. Mr.RK Malik, learned Senior Advocate has submitted that the petitioners had in the previous Academic Sessions i.e. from 2013 onwards, been engaged on contractual basis in pursuance to advertisements having been issued in consonance with the Model Recruitment Rules, 2011 (Annexure P18) and as per which candidates possessing the M.Tech. qualification were considered eligible for the post of Assistant Professor. It is argued that as per the Model Recruitment Rules, 2011, the petitioners are eligible to hold the post of Assistant Professor (on contract basis) even as of date and against the backdrop of their work and conduct being exemplary, they cannot be replaced by another similar contractual arrangement.

7. Upon notice of motion having been issued, a written statement has been filed and placed on record on behalf of the respondent. A stand has been taken that new Recruitment Rules for Faculty in National Institutes of Technology all over the country in Engineering, Sciences, Humanities and Architecture have been enforced, the same having been adopted by the Board of Governors (the Governing Body) of the respondent on 21.6.2017. It is submitted that the new Rules were circulated by the Ministry of HRD, New Delhi on 29.5.2017 and the approval by the Board of Governors is dated 21.6.2017. In support of such stand, documents at Annexures R1 and R2, respectively, are appended along with the written statement.

8. Learned Senior Counsel representing the respondent would contend that as per such Rules, Ph.D. is the minimum qualification for being eligible for the recruitment of Assistant Professors (contract basis), whereas the petitioners possess the qualification of M.Tech. It is submitted that the advertisement bearing No.6 dated 7.6.2017 is in terms of the new Recruitment Rules and the faculty would be recruited on contractual basis in the light of the qualifications enumerated therein.

9. Learned counsel for the parties have been heard at length.

10. It is by now well settled that one contractual/adhoc employee cannot be replaced by another contractual/adhoc employee. However, a contractual engagement in favour of an employee would always be subject to right of the employer to resort to a method of regular appointment. It would also be open

for the employer to dispense with the service of a contractual employee if the work and conduct is found wanting. If there be no requirement of work, it would again be open for the employer to dis-engage the contractual appointment. Even for engaging an employee on contractual basis or thereafter at the stage of considering such employee for extension of the contractual assignment, the employer has a right to prescribe essential qualifications.

11. During the course of hearing, Mr.RK Malik, learned senior Advocate made an attempt to assail the new Recruitment Rules (Annexure R1), appended along with the written statement, by contending that as per Section 26 of the National Institute of Technology Act, 2007, the statutes can be amended only with the previous approval of the Visitor i.e. President of India and in the present case, the Government of India on 29.5.2017 has sent the proposal for amendment and the Board of Governors has approved the same by circulation on 21.6.2017 and forwarded the same to the Government of India, but as of date no approval has been granted by the Visitor.

12. There would be no occasion for this Court to deal with such submission raised by learned senior counsel. In these writ petitions, there is no challenge laid to the new Recruitment Rules. The argument raised by the learned senior counsel and as noticed hereinabove is only on the strength of averments in the replication filed to the written statement in Civil Writ Petition No.14680 of 2017. In the absence of a specific challenge and prayer, this Court would refrain from embarking upon an exercise

to examine the validity of the new Recruitment Rules.

13. To counter such situation, learned senior counsel would submit that the validity of the Rules need not be gone into as it is the pleaded case of the respondent that the new Recruitment Rules after circulation by the Ministry of Human Resource Development were approved by the Board of Governors on 21.6.2017. Learned counsel argues that the question would be as regards applicability of the new Recruitment Rules in a situation where the recruitment process has been initiated in the light of advertisement No.6 dated 7.6.2017, whereas the approval by the Board of Governors has been accorded subsequently in point of time.

14. Against the backdrop of such submission, the petitioners can, at best, plead that, it is the Model Recruitment Rules, 2011 (Annexure P18) along with the Civil Writ Petition No.14680 of 2017 that still hold the field. Even if it so assumed, action of the respondent in prescribing Ph.D. as the essential qualification for the post of Assistant Professor (contract basis) would not call for any interference.

15. Petitioners seek to rely upon Rule 4 of such Rules and which reads as follows:

"4. Deputation/Contractual Appointments :

Faculty, who are appointed on contractual basis, shall be for a fixed period not exceeding five years. Faculty without Ph.D. degree shall be recruited on contract basis only."

16. On the strength of Rule 4 re-produced hereinabove, it is contended that the petitioners possessing the M.Tech.

qualification are eligible to be considered for the post of Assistant Professor (contractual basis) and the respondent cannot prescribe Ph.D. degree as an essential pre-requisite.

17. In the considered view of the Court, the petitioners are mis-reading Rule 4 of the Model Recruitment Rules, 2011. Rule 2 (d) defines 'faculty' and means Professors, Associate Professors and Assistant Professors of the NIT's. A plain reading of Rule 4 brings forth its import i.e. regular recruitment to the faculty including the post of Assistant Professor is not to be made from non-Ph.D. degree holders. Rule 4, does, permit a faculty member to be recruited on contract basis even without Ph.D. degree. However, Rule 4 cannot be read in a manner to place an embargo upon the respondent not to insist upon a Ph.D. degree even for appointing a faculty member on contractual basis. It would always be open for the employer to raise the bar and to insist upon a particular qualification i.e. Ph.D. degree even for engaging faculty members on contractual basis and at par with the regular appointees. Such course of action, if adopted, would not offend Rule 4 of the NIT Faculty Rules, 2011 assuming that it is such Rules which hold the field as has been canvassed on behalf of the petitioners. No exception, as such, can be taken to the action of the respondent in prescribing Ph.D. degree as the essential qualification for recruitment of Assistant Professors (contractual basis) as per advertisement No.6 of 2017.

18. There is, however, one aspect of the matter and under which, limited protection would be available to the petitioners. Clause 21 of the *General Instructions and Information* contained

in the advertisement bearing No.6/17 reads as follows:

“21. In case of non-availability of candidates with B.Tech., M.Tech and Ph.D in relevant branch of Engineering, candidates with B.Tech and M.Tech in relevant branch with first class both at UG and PG level may be considered on semester basis at a gross salary of ₹45,000/- per month. The other relevant conditions for such cases will be same as above.”

19. Under clause 21, in case of non-availability of candidates possessing Ph.D. qualification, candidates with B.Tech. and M.Tech. in relevant Branch are to be considered. Accordingly, it is directed that if such an eventuality arises and candidates possess Ph.D. qualification are not available, then it is the petitioners herein who would have a preferential to be engaged as Assistant Professors on contractual basis as opposed to fresh candidates also possessing similar qualifications. Such view is being taken against the un-controverted factual premise that the work and conduct of the petitioners in the previous Academic Sessions had been found to be satisfactory.

20. But for such limited protection, the writ petitions are dismissed.

JULY 26, 2017
SRM

(TEJINDER SINGH DHINDSA)
JUDGE

Note:	<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
	<i>Whether Reportable:</i>	<i>Yes/No</i>