

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

CWP No. 16003 of 2017
Date of decision: 26.07.2017

Shalom Akhai

....Petitioner(s)

Versus

Director, PEC University of Technology, Chandigarh and another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Dr. D.S. Chahal, Advocate,
for the petitioner.

Mr. Ashwani Talwar, Advocate,
for respondent no. 1.

G.S.SANDHAWALIA, J. (Oral)

The petitioner seeks a writ to stop arbitrary holding of fresh interview for one post of contractual faculty in general category in Mechanical Engineering Department of the respondent-University on the ground when alive reserve panel is available. Accordingly, a direction is sought to operate reserve panel strictly as per Government Instructions.

It is the case of the petitioner that he had been employed as a contractual faculty w.e.f. 12.08.2010 till 23.12.2016 with notional breaks of one day every six months. He was not granted extension beyond 23.12.2016 and was replaced by a fresh contractual employee by holding fresh interview on 03.01.2017. The said action is subject matter of challenge in CWP No. 27485 of 2016. It is his case that he was at number one in the wait list and one Mr. Sumit Taneja was appointed as such and on account of the said person not continuing on account of his resignation, the post is lying vacant. Therefore, being at number one in the wait list, has a

vested right as such.

The said argument is only to be taken up for consideration and rejected. The instructions which are being relied upon do not pertain to any contractual appointments and pertain to regular appointments and cannot be used against the respondent-University.

The only issue, thus, remains for consideration is as to whether the action of the respondents in advertising afresh vide Annexure P-4 for the said posts is justified or not on account of the fact that a contractual employee is as such being continuously being replaced by another contractual employee. It is the grievance of the petitioner that the said procedure has been frowned upon by the Apex Court time and again.

In the short reply filed by the respondents, it has also been mentioned that the performance of the petitioner was not upto the desired standards and, therefore, extension had been granted on an earlier occasion on 24.07.2014 (Annexure R-1/3) and it was subject to improving the performance and that he would not be given any further extension. It is further the case of the respondents that as per the students feed back report for 2015-16 also, the petitioner was graded 'below average' and 'poor' in two subjects and he was not upto the mark and, therefore, a chance was given for improvement.

Mr. Chahal has sought to argue that no such condition was put in the subsequent appointment orders issued on 21.06.2016 and, therefore, the defence taken is an after thought as such.

The record was directed to be produced and Mr. Talwar has accordingly produced the record. A perusal of the same would go on to show that for the year 2014-15, in various subjects, the performance of the

petitioner was found as 'average' and 'below average'. Similarly, for the year 2015-16, it was 'below average' in two subjects and 'poor' in one of the subjects. Similarly, for 2016-17, it was found to be 'below average'.

In such circumstances, this Court is of the opinion that the respondents cannot be saddled with a person who does not come up to the expectations of the institute and, therefore, the petitioner has no vested right on account of having been employed as a contractual employee once his term has come to an end. Accordingly, the action of the respondents in dispensing with the services of the petitioner cannot be interfered with and the present writ petition is dismissed.

Needless to say that since fresh advertisement has been issued and the petitioner has already applied, in case the petitioner meets the mark in the interview, it will be open for the respondents to consider his case for appointment on contractual basis afresh without being prejudiced by any observations made herein above.

26.07.2017
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No