

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

**1. Civil Writ Petition No.2625 of 2017
Date of decision: 02.08.2017**

Monika Prabhakar **...Petitioner**

Versus

Panjab University and others **...Respondents**

2. Civil Writ Petition No.11877 of 2017

Monika Prabhakar **...Petitioner**

Versus

Panjab University and others **...Respondents**

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

Present: Mr. Nitin Kaushal, Advocate for the petitioner
(in both the petitions).

Mr. Subhash Ahuja, Advocate for respondents no.1 to 3
(in both the petitions).

None for respondents no.4 and 5
(in both the petitions).

G.S.SANDHAWALIA, J. (Oral)

This order shall dispose of Civil Writ Petition Nos.2625 and 11877 of 2017 as both the petitions pertain to the same parties and common questions of fact and law are involved in these petitions. However, for dictating this order, the facts have been taken from Civil Writ Petition No.2625 of 2017.

The petitioner challenges the benefits which have been granted to respondent no.5 at her cost who has taken over the post of the Guest Faculty (Chemistry) vide order dated 3.2.2017 (Annexure P/6) in spite of no

specific advertisement having been issued.

The grouse of the petitioner is that vide advertisement dated 20.7.2015(Annexure P/2) for the post of Assistant Professor in Chemistry, she was appointed in July, 2015 due to retirement of a regular lecturer. It is the case of the petitioner that she and one Ms. Jasleen were appointed as Guest Faculty(Chemistry) through a Selection Committee formed by the Vice-Chancellor and there were a total of three guest faculty lecturers as one Bhawna, respondent no.4 was continuing as a Guest Lecturer. The bank statement reflecting the payment to the petitioner has been attached as Annexure P/4. Reliance is placed upon the circular dated 30.6.2015 (Annexure P/5) issued by the respondent-University itself to submit that all the persons working as guest faculty and/or temporary basis should be allowed to continue as such until they are replaced by the regular appointees. It is further case of the petitioner that in June, 2016, the post was again advertised for an additional faculty and respondent no.5 was appointed as Guest Faculty Lecturer. It is pertinent to notice that the said respondent has been duly served and she has chosen not to appear and contest the writ petition.

Subsequently, when the new session started vide impugned order dated 3.2.2017(Annexure P/6) respondents no.4 and 5 continued to be appointed as Guest Faculty on lecture basis on an honorarium of ₹ 1000/- per lecture from January, 2017 to June, 2017 against the vacant posts of the department but the petitioner's services were dispensed with. Resultantly, the writ petition bearing No.2625 of 2017 has been filed. Subsequent writ petition bearing No.11877 of 2017 came to be filed

wherein teaching load was assigned to the said respondent for July, 2017 and it has been challenged as the said respondent no.5 continued to take classes in pursuance of the appointment order dated 3.2.2017 (Annexure P/6). Resultantly, it is apparent that without any advertisement for the Guest Faculty, the said respondent has been duly appointed which is in clear violation of Articles 14 and 16 of the Constitution of India.

Apart from that it is not disputed that the petitioner was already in place prior in point of time having been appointed in July, 2015 whereas the said respondent was appointed only for the first time in July, 2016 and thus for all purposes was junior to the petitioner if seniority is to be taken into consideration and protection is to be granted to respondent no.4. However, for the reasons best known to the respondent-University without issuing any advertisement for the session January, 2017 and without giving a chance to the petitioner to even apply for the post, the benefit of appointment has been continued to said respondent no.5. The arbitrariness has further continued for the next session where the petitioner has not been given again a chance by advertising the post. The respondent-University by following its own instructions dated 30.6.2015(Annexure P/5) allowed the private respondents to continue to work as Guest Faculty Lecturers whereas the said principle has not been applied in case of the petitioner apparently which on the face of it is in violation of Articles 14 of the Constitution of India. The same reads as under:-

“The Syndicate at its meeting held on 31.05.2015 (Para General discussion) has decided as under:-

“That all the persons working as guest faculty and/or temporary basis should be allowed to continue as such until they are replaced by the regular appointees.”

This is in continuation to circular No.6156-6206/Estt-I dated 10.7.2014.

It is requested to act accordingly.”

Therefore, action of the respondents is clearly in violation of the law laid down by the Apex Court in **Hargurpratap Singh Vs. State of Punjab and others** 2007(13) SCC 292 wherein it has been held that ad-hoc employees are not to be replaced by another set of ad-hoc employees.

The least could have done the by the respondent-University at least to give a chance to the petitioner if it felt that the services of the petitioner were not upto the mark. In absence of any such opportunity and offer to the general public for the appointment to the said post, the respondent-University has failed to get the best available talent/teaching staff for the Institute. Resultantly, action of the respondent-University in continuing with respondent no.5 as Guest Faculty cannot be appreciated in any manner.

The argument raised that respondent no.5 is working on lecture basis and there is no regular work is not acceptable since the said respondent continues to work regularly since her appointment in July, 2016 and as such there is work available.

Accordingly a writ of certiorari is issued and appointment of respondent no.5-Shallay Girdhar vide order dated 3.2.2017 (Annexure P/6) is quashed. In view of the policy dated 30.6.2015 (Annexure P/5), the petitioner has a legal right to continue, therefore, a writ of mandamus is issued to allow the petitioner to continue to work as Guest Faculty against the post of respondent no.5. The respondent-University shall also pay costs

of ₹ 10,000/- in each case.

With the aforesaid directions, both the writ petitions are disposed of accordingly.

August 02, 2017
Pka

(G.S.SANDHAWALIA)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No