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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: August 02, 2017

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W.P.(C) 6515/2017 & CM. No. 27034/2017
DR. SANJAY KUMAR AGARWAL AND ORS

..... Petitioners

Through: Ms.Geeta Luthra, Sr. Adv. with Mr.
Manish Verma & Ms. Parul Sharma
Advs.

versus

UNIVERSITY OF DELHI AND ANR

..... Respondents

Through: Ms.Manish Singh, Mr.Amit Bansal,
Ms.Seema Dolo, Advs. for R1-
University of Delhi
Mr. R.K. Saini, Adv. for R-2

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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02.08.2017

1. The present petition has been filed by three petitioners stating that they were appointed as ad hoc Assistant Professors (Political Science) and (Physics) in the respondent No.2 College on August 12, 2009, August 02, 2011 and August 09, 2007 respectively. On July 19, 2017, an advertisement was issued by the College for making appointment of Assistant Professors on ad hoc basis in various subjects including Political Science and Physics.

2. It is the contention of Ms. Geeta Luthra, learned Senior Counsel for the petitioners that the very advertisement issued by the respondents is illegal in view of the

settled position of law in terms of the judgment of the Supreme Court in *State of Haryana and Ors. v. Piara Singh and Ors* (1992) 4 SCC 118, that an ad hoc appointment cannot be replaced by another ad hoc appointment. She states, the advertisement is overlooking the years of service put in by the petitioners in the said College.

3. It is her submission that the appointment of the petitioners should have been automatically continued till such time, regular appointments are made. She would rely upon the following judgments of the Supreme Court and this Court; *Mohd. Abdul Kadir and Anr. v. Director General of Police, Assam and Ors.* (2009) 6 SCC 611; *Karnataka State Private College Stop- Gaplectures Association v. State of Karnataka and Ors.* AIR 1992 SC 677; *Dr. Vishal Sehgal and Ors v. Secretary (Health) and Ors* (2005) 116 DLT 493; *Abhinav Chaudhary and Ors v. Delhi Technological University & Anr* W.P.(C) No. 3512/2014 and connected writ petition decided on January 20, 2015 in support of her contention.

4. When the matter was listed on July 31, 2017, this Court had adjourned the matter to enable Mr. R.K. Saini, to seek instructions from respondent no.2. Today Mr. Saini states, on instructions, that pursuant to advertisement dated July 19, 2017, the petitioners had appeared in the interview but were not successful. He seeks the dismissal of the writ petition on this ground only.

5. Noting the submissions as noted above, insofar as the plea of Ms. Luthra that the respondents could not have issued the advertisement and should have continued the

petitioners on ad hoc appointment, till such time they make the regular appointments based on the judgment of *State of Haryana and Ors. v. Piara Singh and Ors (supra)* is concerned, there cannot be any dispute on that position of law. Even reliance placed on the judgment of the Supreme Court in the case of *Mohd. Abdul Kadir and Anr. (supra)* is concerned, the Supreme Court has deprecated the action of giving artificial annual breaks and reappointments. The Supreme Court also held when ad hoc appointment is under a Scheme and is in accordance with the selection process prescribed by the Scheme, there is no reason why those appointed under the Scheme should not be continued, so long as the Scheme continues.

6. Even the judgment relied upon by Ms. Geeta Luthra in the case of *Abhinav Chaudhary and Ors (supra)*, a Coordinate Bench of this Court relying upon the judgment of the Supreme Court in *Piara Singh and Ors; Secretary, State of Karnataka v. Umadevi and Ors. (2006) 4 SCC 1* and *Mohd. Abdul Kadir and Anr. (supra)*, has held that a contractual employee cannot be replaced by another contractual employee. Ms. Luthra would have been justified in relying on these judgments, had the petitioners not appeared in the interview. In other words, the petitioners having appeared in the interview and taken a chance and not being successful is a relevant factor for this Court to dismiss the petition. This I say so, in view of the settled position of law in terms of the judgment of the Supreme Court in the case reported as *(1995) 3 SCC 486 Madan Lal and Ors v. State of Jammu and Kashmir and Ors.*, wherein the Supreme Court has held as under:-

“9. Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being concerned respondents herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Upto this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the concerned Members of the Commission who interviewed the petitioners as well as the concerned contesting respondents. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, that they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview then, only because the result of the interview is not palatable to him he cannot turn round and subsequently contend that the process of interview was unfair or Selection Committee was not properly constituted. In the case of Om Prakash Shukla v. Akhilesh Kumar Shukla and Ors., (AIR 1986 SC 1043), it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner”.

7. The aforesaid position of law has been reiterated by the Supreme Court in its subsequent judgment reported as **(2013) 11 SCC 309 Ramesh Chandra Shah v. Anil Joshi**, wherein the Supreme Court, in para 24, has held as under:-

“24. In view of the propositions laid down in the abovenoted judgments, it must be held that by having taken part in the process of selection with full

knowledge that the recruitment was being made under the General Rules, the respondents had waived their right to question the advertisement or the methodology adopted by the Board for making selection and the learned Single Judge [Anil Joshi v. State of Uttarakhand, 2012 SCC OnLine Utt 521] and the Division Bench [Ravi Shankar Joshi v. Anil Joshi, 2012 SCC OnLine Utt 766] of the High Court committed grave error by entertaining the grievance made by the respondents.”

8. Even the Division Bench in the case of **Ravi Chandra Prakash v. Supreme Court of India and Ors. W.P.(C) No. 3865/2017 decided on July 06, 2017**, has in para 27 held as under:-

“27. As noted above, the petitioner has accepted the correctness of the evaluation process; the expertise of the examiners and reposed faith in the ability of the Examining Committee, when he participated in the examination five times, without making any objection or challenge, even if such challenge was maintainable. The petitioner therefore, would stand precluded from making the present challenge on this ground alone.”

9. Even this Court, in the case of **Jitender Yadav v. Union of India W.P.(C) No. 7500/2013 decided on August 24, 2015**, wherein it relied upon the judgment in the case of **Madan Lal and Ors (supra)**, has rejected the plea on behalf of the petitioner challenging the interview process by holding that the petitioner cannot challenge the fixing of minimum qualifying marks for the purpose of interview having participated in the same.

10. The submission of Ms. Luthra that mere participation in the interview pursuant to an advertisement issued, which is contrary to law, the principles of estoppel would not

come into play, is concerned, the same does not appeal this Court. Ms. Luthra has not pointed out any statutory Rule, which bars ad hoc appointments on year to year basis; in other words, a statutory Rule, which stipulates that ad hoc appointment once made shall continue till such time regular appointment is made. No doubt, the Supreme Court in *State of Haryana and Ors v. Piara Singh and Ors (supra)* and *Mohd. Abdul Kadir and Anr. (supra)* has held, ad hoc appointments cannot be replaced by another ad hoc appointments; such appointments should continue till the Scheme but at the same time, as noted above, the position of law as laid down by the Supreme Court in cases where the petitioners have taken part in the process of selection accepting the correctness of evaluation process and reposed faith in the ability of the Interview Committee and taken a chance to get themselves selected, cannot question the advertisement or the methodology adopted by the Selection Committee, would also be of relevance. No relief can be granted to such petitioners. The case in hand is one such case, where the petitioners having participated in the interview process, they are precluded from challenging the very advertisement pursuant to which they have participated in the same.

11. For the reasons stated above, I do not see any merit in the petition. The same is dismissed.

CM. No. 27034/2017 (for stay)

Dismissed as infructuous.

V. KAMESWAR RAO, J

AUGUST 02, 2017/ak