

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-10139-2018 (O&M)

Date of Decision:-25.04.2018.

Sanjay Kumar and others

.....Petitioners

Versus

Punjab National Bank, Century Rural Development Trust (Regd.) through
its General Manager and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. R.K. Malik, Senior Advocate with
Mr. Sunil Hooda, Advocate for the petitioners.

P.B. BAJANTHRI, J. (Oral)

In the instant writ petition, petitioners have challenged the validity of Annexure P-22 dated 11.4.2018 by which concerned respondents have issued advertisement for engaging eligible persons for the post of Faculty, Office Assistant and Attender.

2.) Petitioners were stated to have been appointed on contract basis to the post of Faculty, Office Assistant and Attender, respectively. Their grievance is that they are entitled to renewal of their contract. Further they have sought that they are entitled to increments, casual/medical leave and other leaves etc. In this regard, they have submitted representation on 1.2.2018. Concerned respondent has not passed any order either accepting or rejecting petitioners' claim. Insofar as challenge to Annexure P-22 advertisement is concerned, petitioners have not made out a case except

stating that they are already working against the post of Faculty, Office Assistant and Attender pursuant to the earlier advertisement for contract appointment. Petitioners have no legal or statutory right to seek renewal of contract appointment. Contract appointment would be a tenure appointment. As and when tenure is completed they have to quit the post held by them on contract basis. Supreme Court time and again held that contract appointee has no legal right and so also for regularization or continuation in the post as and when tenure is completed. In fact, Supreme Court in case of **AIR India Ltd. Vs. Dharmendra Kumar (2001) 10 SCC 547** it is held that if there is no legal right to continue in service, the High Court cannot restrain the employer from terminating the service of the expiry of the term. Court cannot be party to renewal of contract appointment. In view of these facts and circumstances and the principle laid down by the Supreme Court, decisions cited by the petitioner vide Annexure P-20, P-25, P-26 and P-27 are distinguishable in view of the later decision of the Supreme Court (Constitution Bench) passed in the case of **Secretary, State of Karnataka and others Vs. Uma Devi and others (2006) 4 SCC 1.**

Para 43 and 47 reads as under:-

*“43. Normally, what is sought for by such temporary employees when they approach the court, is the issue of a writ of mandamus directing the employer, the State or its instrumentalities, **to absorb them in permanent service or to allow them to continue.** In this context, the question arises whether a mandamus could be issued in favour of such persons. At this juncture, it will be proper to refer to the decision of the Constitution Bench of this Court in **Dr. Rai Shivendra Bahadur Vs. The Governing Body of the Nalanda College [(1962)]***

Supp. 2 SCR 144]. That case arose out of a refusal to promote the writ petitioner therein as the Principal of a college. This Court held that in order that a mandamus may issue to compel the authorities to do something, it must be shown that the statute imposes a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it. This classical position continues and a mandamus could not be issued in favour of the employees directing the government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them permanent.”

47. *When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.”*

have not made out a case so as to interfere with Annexure P-22.

3.) At this stage, learned counsel for the petitioners relied on policy relating to continuation in service dated 05.2.2016. He is relying on clause 5. It is only a communication and not policy. Under this clause petitioners are not entitled to have any legal or statutory right. At the best petitioners could also participate in the fresh process of selection pursuant to the advertisement Annexure P-22. Thus, petitioners have not made out a case so as to interfere with Annexure P-22 dated 11.04.2018. Insofar as extending the benefit of increment, benefit of casual/medical leave and other leaves are concerned with reference to their service rendered, concerned respondent is hereby directed to pass a speaking order on the petitioner's representation dated 1.2.2018 within a period of 3 months and communicate the decision to the petitioners.

4.) With the above observations, petition stands disposed of.

(P.B. BAJANTHRI)
JUDGE

April 25, 2018.
sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.