

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.16956 of 2017
Reserved on :11.12.2017
Date of decision:11.01.2018

Tamanna Kewal

....Petitioner

Versus

Panjab University & others

...Respondents

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

Present: Mr.Rajat Mor, Advocate, for the petitioner.

Mr.Subhash Ahuja, Advocate, for respondents No.1 & 2.

G.S. SANDHAWALIA, J.

Petitioner seeks a writ in the nature of mandamus, under Article 226 of the Constitution of India, to allow her to continue as Guest Faculty till regular appointments are made. Accordingly, the action of the respondent-University to replace the petitioner with similarly situated Guest Faculty, by way of advertisement dated 25.07.2017 (Annexure P-5) is sought to be quashed and further direction for restraining them from making fresh appointments against the petitioner and to continue her on the said post.

The case of the petitioner is that the respondent-University and its constituent College at Balachaur, District SBS Nagar, Punjab-respondent No.3 had advertised posts of Guest Faculty in Commerce on 03.08.2016 (Annexure P-1). She was selected and appointment was made on 20.10.2016 (Annexure P-2) and the selection was as per the guidelines framed by the University. There was no dispute regarding her qualifications, as such, being NET qualified candidate. It is also not disputed that recommendation was made for extension of her term as Guest Faculty by the Principal of the respondent No.3-College and accordingly,

the respondent-University, on 02.03.2017 (Annexure P-4) gave approval to re-appoint and start the work till the end of the session 2016-17. The impugned advertisement was issued on 25.07.2017 (Annexure P-5) whereby walk-in-interview for the post of Assistant Professors as Guest Faculty, again for the same subjects, were to be held from 02.07.2017, on the basis of which, the petitioner approached this Court on 01.08.2017 and secured an order that the respondents were not to fill up the post of the petitioner by similarly situated person. It is a matter of record that the petitioner was not replaced by any such similarly situated person.

Thus, counsel for the petitioner has relied upon the judgment of the Apex Court in **Hargurpratap Singh Vs. State of Punjab & others 2007 (13) SCC 292**, which has been followed by the judgments (Annexures P-7 to P-11) of this Court, to contend that the action of the respondents could not be justified.

The respondent-University, in their defence, have taken the plea that previously, only 10 candidates had applied for the 2 Guest Faculty posts in the subject of Commerce whereas, as per the impugned advertisement, 32 candidates had reported for interview but the petitioner did not approach for interview and obtained an *ex parte* stay order. It is the case of the respondents that the sanction had been given by the Vice-Chancellor for the advertisement dated 03.08.2016, for one semester, only with the condition that the post would be re-advertised in December, 2016 or January, 2017. This condition was also imposed in the appointment order of the petitioner and therefore, she was bound down

by the same and she had no legal right. It was further the case of the University that except the petitioner, none of the 28 Guest Faculty appointed had questioned the impugned advertisement and therefore, she had waived her right, as such. She could have applied and competed with other candidates and had no right to hold the post.

Keeping in view the above pleadings, this Court is of the opinion that the present writ petition deserves to be allowed, on the ground that 2 posts of Commerce were advertised and apart from the petitioner, there was one Dakshi Jain who was appointed in the subject of Commerce. As noticed, the appointment was as a Guest Faculty till January, 2017 at the initial stage or till the posts were filled-up through the process of regular selection. Posts were to be re-advertised but extension was granted on the request of the Principal of the respondent No.3-College and the petitioner along with Dakshi Jain were given extension on the same terms and conditions. The Apex Court has already deprecated the process adopted by the Colleges to appoint persons on contractual basis and then dispense with their services at the end of the academic session by replacing them with similar arrangement. If the work-load was available and regular appointments were not made, the petitioner's services could have been extended as was done on an earlier occasion. Accordingly, the advertisement dated 25.07.2017 (Annexure P-5) for the post of Lecturer in the subject of Commerce, on the same terms, cannot stand legal scrutiny.

Resultantly, the present writ petition is allowed and the

advertisement dated 25.07.2017 (Annexure P-5) is quashed. The petitioner is held entitled to continue in service with respondent No.3-College, as per her earlier terms and conditions. The petitioner has also wrongly been kept away from work for the academic session from August, 2017 onwards and therefore, would also be entitled to be paid for the said period. The respondent-College shall initially make payment by calculating the average number of lectures the petitioner would have delivered during the period from August, 2017 to December, 2017 and pay the amount to the petitioner, within a period of 4 weeks from the receipt of a certified copy of this order. It will be open to the College to claim the said amount from the University, since the University is responsible for the petitioner being denied the right to work during the said period, on account of the advertisement issued.

The petitioner shall continue in service till regular selected employees are appointed against the post that she is holding. In case the respondents do not require the services of the petitioner, at any stage, the respondents can dispense with the services of the petitioner. Similarly, in case the petitioner is not keeping upto the parameters of the respondent-College and her work and conduct is not satisfactory, it would always be open to the respondents to dispense with her services.

Writ petition stands allowed, accordingly.

11.01.2018
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No