

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

**141 CWP No. 6980 of 2018 (O&M)
DATE OF DECISION :- March 20, 2018**

Naresh Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

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

Present:- Mr. Jasbir Mor, Advocate
for the petitioner.

P.B. BAJANTHRI, J. (ORAL)

1. In the instant petition, petitioner has challenged the advertisement dated 24.01.2018 (Annexure P-6), which is related to selection and appointment of TGT (Science) on contract basis by replacing the petitioner. Petitioner was initially appointed on 15.04.2014 and continued up to 25.03.2018. In other words, from time to time, contract appointment had been renewed.

2. Learned counsel for the petitioner submitted that post of TGT (Science) is governed by the State Act and Rules to the extent that when a contract appointee is appointed for a particular period, he is entitled to claim a regularization as and when he completed three years of service. Therefore, without regularizing the petitioner's service, respondent resorting to fresh contract appointment by issuing advertisement vide Annexure P.6 would be contrary to the policy of the respondent. Therefore, re-advertising the post and fixing the tenure of the petitioner on contract basis upto 25.03.2018 is illegally and arbitrary.

3. It is further contended that the petitioner's case is similar to Annexure P-9, Anita Soharu Guleria vs. Director of Education & ors., W.P (C) 1845/2014 and connected cases decided on 25.02.2015 by the High Court of Delhi which is stated to have been attained finality.

4. Heard the learned counsel for the petitioner.

5. Crux of the matter in the present petition is while advertising the post of TGT (Science) in the year 2013, respondents have not made known to the eligible applicant that the post for TGT (Science) for the contract appointment would be treated as regular appointment as and when such appointee completes three years of service while holding post. In the absence of notifying the fact that contract appointee is entitled to regularization as and when he completed three years of service & regularization of such contract appointee would be violative of Articles 14 and 16 of the Constitution of India. Hon'ble Supreme Court time and again held that advertisement must be crystal clear relating to method of recruitment and status. In the present case in the year 2013, when the post of TGT (Science) was notified, it was not indicated or revealed to the extent that contract appointee as and when he completed three years of service, his services would be regularized. Therefore, insofar as regularization Clause of appointee was not made published while recruiting TGT (Science) on contract basis in the year 2013. Consequently, petitioner has no right to claim regularization against the post held by him on contract basis though it is a tenure appointment which has been extended from time to time during the intervening period of 15.04.2014 to 25.03.2018. Annexure P-9 where the petitioner is taking shelter to the extent that petitioner case is similar to

the *Anita Soharu Guleria's* case (supra) is concerned factual aspects were not identical to the extent that in the advertisement for contract appointment, there is no indication or revealing the fact that contract appointee would be regularized as and when he completed three years of service read with State Act and Rules which is stated to have been adopted by the respondents. In other words there is no occasion for the Court while deciding *Anita Soharu Guleria's* case (supra) to take note of violation of Articles 14 and 16 of Constitution of India to the extent of nature of appointment. In the present case nature of appointment is only to the extent of contract appointment. Advertisement was not disclosing that contract appointment would be followed by regularization as and when completed three years of service on contract appointment. The eligible applicants who were already appointed on contract basis in some other organizations or institutions they have been deprived of right to make application. Had respondent officially disclosed in the advertisement that the contract appointment would be followed by regularization as and when three years of service is completed, in that event, in a contract appointment who has been appointed in some other institutions would have made applications or participated in the process of appointment on the basis of TGT (Science) on contract basis. Thus, there is violation of Articles 14 and 16 of the Constitution of India if the official respondent take up the matter of the petitioner for the purpose of regularization pursuant to his contract appointment during the intervening period of 15.04.2014 to 25.03.2018. Accordingly, present petition stands dismissed.

6. At this stage learned counsel for the petitioner submits that he

has challenged Clause IV of the appointment orders dated 25.03.2014 and 14.03.2017, which read as under:-

“4. After expiry of three years from the date of joining, you will automatically cease to be the employee of the school.”

“4. After expiry of one year from the date of joining, you will automatically cease to be the employee of the school.”

7. Pursuant to the advertisement in the year 2013, petitioner had applied for the post. Advertisement is crystal clear that it is a contract appointment and it is a tenure appointment. The petitioner having accepted the order of appointment in the year 2014 and it was renewed on 14.03.2017. Supreme Court in the case of 'Secretary, State of Karnataka and others vs. Uma Devi (3) and others', (2006) 4 SCC 1, held as under (extract of paras 28 and 47):-

“28. In Director, Institute of Management Development, U.P. v. Pushpa Srivastava this Court held that since the appointment was on purely contractual and ad hoc basis on consolidated pay for a fixed period and terminable without notice, when the appointment came to an end by efflux of time, the appointee had no right to continue in the post and to claim regularisation in service in the absence of any rule providing for regularisation after the period of service. A limited relief of directing that the appointee be permitted on sympathetic consideration to be continued in service till the end of the calendar year concerned was issued. This Court noticed that when the appointment was purely on ad hoc and contractual basis for a limited period, on the expiry of the period, the right to remain in the post came to an end. This Court stated that the view they were taking was the only view possible and set aside the judgment of the High Court which had given relief to the appointee.

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, causal 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 cases concerned, 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.”

8. Thus, there is no infirmity in the condition imposed, so also, at this distance of time, he cannot question the condition imposed.

(P.B. BAJANTHRI)
JUDGE

March 20, 2018
neeraj

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No