

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Order: April 17, 2018

(i) + **W.P.(C) 4452/2015 & C.Ms. 3226/2017, 7770/2017 & 8075/2015**

SOUMITA DAS AND ORS.Petitioners

Through: Ms. S. Janani & Ms. Shruti Bist,
Advocates

Versus

INDIRA GANDHI NATIONAL OPEN UNIVERSITY

.....Respondent

Through: Mr. Aly Mirza, Advocate

With

(ii) + **CONT.CAS(C) 1323/2016**

SOUMITA DAS & ORSPetitioners

Through: Ms. S. Janani & Ms. Shruti Bist,
Advocates

Versus

S K SHARMA

..... Respondent

Through: Mr. Aly Mirza, Advocate

(iii) + **W.P.(C) 3639/2015 & C.M. 6486/2015**

ANOJ KUMAR Petitioner

Through: Ms. S. Janani & Ms. Shruti Bist,
Advocates

Versus

INDIRA GANDHI NATIONAL OPEN
UNIVERSITY

..... Respondent

Through: Mr. Aly Mirza, Advocate

With

(iv) + **CONT.CAS(C) 543/2015**

ANOJ KUMARPetitioner
Through: Ms. S. Janani & Ms. Shruti Bist,
Advocates
Versus
SUDHIR BUDAKOTI Respondent
Through: Mr. Aly Mirza, Advocate

(v) + **W.P.(C) 3694/2015 & C.Ms. 3269/2017, 6580/2015,
7713/2015 & 7768/2017**

SUDHIR VATS AND ORS.Petitioners
Through: Ms. S. Janani & Ms. Shruti Bist,
Advocates
Versus
INDIRA GANDHI NATIONAL OPEN
UNIVERSITY Respondent
Through: Mr. Aly Mirza, Advocate

With

(vi) + **CONT.CAS(C) 545/2015**

NAVEEN KUMARPetitioner
Through: Ms. S. Janani & Ms. Shruti Bist,
Advocates
Versus
SUDHIR BUDAKOTIRespondent
Through: Mr. Aly Mirza, Advocate

And

(vii) + **CONT.CAS(C) 1322/2016**

SUDHIR VATS & ORS.Petitioners
Through: Ms. S. Janani and Ms. Shruti Bist,
Advocates
Versus

S K SHARMA

..... Respondent

Through: Mr. Aly Mirza, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. In the above captioned three writ petitions, quashing of Advertisement of 1st April, 2015 (*Annexure P-12*), is sought with direction to respondent to continue with the service of petitioners till regular Consultants are appointed after due selection. Remuneration approved by Board of Directors in 120th meeting (*Annexure-P-9*) is also sought by petitioners, who had worked as Senior/ Junior Consultants on contract basis with respondent for about seven years.

2. With the consent of learned counsel for the parties, W.P.(C) 3694/2015 is treated as the lead case and the above captioned petitions have been heard together and are being decided by this common judgment.

3. By way of interim orders, respondent-University was restrained from terminating petitioners' service and not to make any appointment to the posts, which were occupied by petitioners. Contempt petitions have been filed by *Anoj Kumar* and *Naveen Kumar*, as their service was terminated despite interim order. The other contempt petitions are by *Sudhir Vats*, *Somita Das* and four others, as their contract was not renewed, resulting in dispensing with their services.

4. Vide Advertisement of 1st April, 2015 (*Annexure P-12*), engagement of Senior/ Junior Consultants in Information Technology on contract basis was sought. The precise challenge to the impugned

Advertisement of 1st April, 2015 (*Annexure P-12*) is on the ground that one set of contractual employees appointed are being replaced by another set of contractual employees, which is contrary to the decision of a Division Bench of this Court in *Narinder Singh Ahuja & Ors. Vs. The Secretary, Ministry of Health & Family Welfare & Ors* 2014 SCC OnLine Del 2243.

5. In the counter affidavit filed, the stand taken by respondent-University is that pursuant to impugned Advertisement of 1st April, 2015 (*Annexure P-12*), petitioners except Anoj Kumar and Naveen Kumar have been appointed as Consultants. Learned counsel for petitioners submits that the claim of petitioners - *Anoj Kumar* and *Naveen Kumar* qua the Advertisement of 1st April, 2015 (*Annexure P-12*) still survives.

6. Regarding claim of *Anoj Kumar* and *Naveen Kumar*, I find that the stand taken by respondent –University in the counter affidavit is that there is no regular appointment of Senior/ Junior Consultants and the contractual engagement is continued/ discontinued, as per the need. Pertinently, eight posts were advertised and only six of them have been filled. In the additional affidavit of 4th November, 2015, the stand taken by respondent –University is that petitioner- *Naveen Kumar* did not possess the requisite qualification for the post of Consultant and petitioner- *Anoj Kumar* could not answer the questions pertaining to his job and had entered into confrontational attitude with the members of the Selection Committee by asserting that he has filed a writ petition before the Court. So, petitioners -*Anoj Kumar* and *Naveen Kumar* were not found suitable for the job. It is pointed out by respondent's counsel that petitioner- *Naveen Kumar* was having a bachelors degree, whereas, as per

Advertisement of 1st April, 2015 (*Annexure P-12*), the requisite qualification for the post of Senior Consultant is Masters degree in Computer Science/ Masters in Computer Application (MCA)/ B.Tech in Computer Science and Applications and for the post of Junior Consultant, the essential qualification is Masters in Computer Application (MCA) and M.Sc. (Computer Science). Learned counsel for respondent-University further submits that petitioners were employed under the *eGyanKosh Project*, which was launched in the year 2006 but had commenced in the year 2007 and the said project was brought under the Non-plan and was subsumed in *Technology Enabled Education Group*.

7. Learned counsel for petitioners submits that even the *Technology Enabled Education Group Programme* has been now taken over by *Inter University Consortium (IUC)*.

8. The stand of respondent-University is that all employees under this project are being coordinated by team leaders, who are at the level of Directors and Deputy Directors and nature of work may vary from time to time and also, as the technology changes, the University engages Consultants on contractual basis for carrying out the work of various projects and so, it is not the case of one set of employees being replaced by another set of employees, and so, reliance placed by petitioners' counsel upon decision in *Narender Singh Ahuja (Supra)*, is of no help to the case of petitioners. It is emphasized by respondent's counsel that there is no regular sanctioned post and work on contract basis is carried out by contractual employees, as per need of various projects. It is pointed out by respondent's counsel that petitioner- *Naveen Kumar* was working as a trainee, as he did not possess the requisite qualification. To submit so,

attention of this Court is drawn to *Annexure-B* filed with the additional affidavit of respondent-University, which reveals that petitioner- *Naveen Kumar* was appointed on consolidated salary as a Trainee in *eGyanKosh Project*.

9. The stand of petitioners in rejoinder filed to the counter affidavit of respondent-University, is that petitioner- *Naveen Kumar* was working on the post of Junior Consultant for last seven years to the satisfaction of respondent-University and his name was infact kept in the wait list.

10. Learned counsel for respondent-University submits that in the reply filed to the additional affidavit of respondent, it is no-where stated that petitioner –*Anoj Kumar* answered all the questions in the interview for the post in question.

11. So far as contempt petitions are concerned, learned counsel for respondent-University submits that petitioners *Anoj Kumar and Naveen Kumar* were not terminated and upon completion of their contractual period, their services came to an end. Regarding petitioner-*Sudhir Vats* and five others, the stand taken by respondent-University in the contempt petitions is that their service was not discontinued but it came to an end upon completion of contractual period and before that, it was made clear to them in October, 2016 that it would be the last extension. So, it is submitted there is no violation of interim orders.

12. In rebuttal, learned counsel for petitioners submits that the project of respondent-University has not come to an end and persons have been appointed on contractual basis even after October, 2016.

13. Regarding petitioners' entitlement to payment of salary etc. as per Resolution of 20th May, 2014 (*Annexure P-9*), the stand of respondent-

University is that a clarification of this Board Resolution was made on 21st July, 2014 with respect to remuneration to be paid to Senior/ Junior Consultants. The stand of respondent-University in additional affidavit is that the remuneration of Consultant is fixed, keeping in view the educational qualifications of the contractual employee and no such employee is being paid in terms of Board Resolution of 20th May, 2014 (*Annexure P-9*) and further clarification in this regard is proposed in the agenda of the next meeting of the Board of Management. It is further submitted by counsel for respondent-University that the remuneration payable to Senior/ Junior Consultants is reflected in Advertisement of 1st April, 2015 (*Annexure P-12*) and it is not in consonance with the Board Resolution of 20th May, 2014 (*Annexure P-9*).

14. At this stage, learned counsel for petitioners points out that petitioners have not been paid salary for the month of November, 2016, although they had worked for 22 days.

15. Upon hearing and on perusal of impugned Advertisement of 1st April, 2015 (*Annexure P-12*), material on record and the decision cited, I find that the challenge to the impugned Advertisement of 1st April, 2015 (*Annexure P-12*) survives only in respect of petitioners- *Anoj Kumar* and *Naveen Kumar*. The stand of respondent-University of there being no regular post of Senior/ Junior Consultants remains un-rebutted. It also remains unrebutted that petitioner –*Naveen Kumar* was working as a trainee and not as a Senior/ Junior Consultant. The assertion of respondent –University of petitioner –*Naveen Kumar* not possessing essential qualification also remains unchallenged. In such a situation, denial of re-employment to petitioner- *Naveen Kumar* on contractual

basis is justified. As regards petitioner- *Anoj Kumar* is concerned, I find that as per additional affidavit of respondent-University, he could not answer the questions pertaining to his job when he was interviewed for re-employment on contractual basis. This factual assertion remains unrebutted in the rejoinder filed and so, no fault can be found with non-renewal of service of petitioner- *Anoj Kumar*.

16. As regards payment of remuneration as per Board Resolution of 20th May, 2014 (*Annexure P-9*) is concerned, I find that in the Advertisement of 1st April, 2015 (*Annexure P-12*), it was clarified that remuneration payable to Senior/ Junior Consultants would be ₹35,000/- and ₹15,000/- respectively. In the affidavit filed by respondent-University, it stands clarified that the remuneration of Senior/ Junior Consultants is fixed in view of their educational qualifications and experience and regarding Board Resolution (*Annexure P-9*), it is stated that a clarification is being sought from Board of Management of respondent-University. In such a situation, no case for payment of remuneration as per Board Resolution of 20th May, 2014 (*Annexure P-9*) is made out.

17. Reliance placed by petitioners' counsel upon decision in *Narinder Singh Ahuja (Supra)*, is of no assistance to the case of petitioners because the instant case is not of replacement of one set of contractual employees with another set of contractual employees, as upon completion of term, Consultants are re-employed. In the instant case, *eGyanKosh Project* was subsumed in *Technology Enabled Education Group* and it is now said to have been taken over by *Inter University Consortium (IUC)*. In such a situation, directions as sought in these petitions cannot be granted.

18. So far as contempt petitions are concerned, I find that there is no deliberate or wilful disobedience of interim orders passed by this Court in the writ petitions, as the tenure of petitioners had come to an end and so, it cannot be said that petitioners' contract stood terminated. There is no question of substitution of posts on which petitioners were working. In fact, no other person except six petitioners were appointed pursuant to Advertisement in question, so no substitution of post took place. Apparently, there is no violation of interim orders and as such contempt petitions are liable to be dismissed and are accordingly dismissed.

19. During the course of hearing, it was pointed out by counsel for petitioners that before the term of petitioners came to an end, their salary for the month of November, 2016 has not been paid, although they had worked for 22 days. Learned counsel for respondent-University submits that this aspect would be looked into and petitioners would be informed about it in writing within a period of four weeks.

20. In light of the aforesaid, the above captioned writ petitions and contempt petitions along with pending applications are dismissed, while leaving the parties to bear their own costs.

(SUNIL GAUR)
JUDGE

APRIL 17, 2018

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