

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-13560-2014 (O&M)

Date of Decision: February 07, 2019

Dr. Deepak Kumar Gupta

... Petitioner

vs.

Panjab University, Chandigarh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Puneet Bali, Sr. Advocate with
Mr. Paramveer Singh, Advocate
for the petitioner.

Mr. Suvir Sidhu and
Mr. Naveen Chopra, Advocates
for respondent No.1.

Mr. D.S. Patwalia, Sr. Advocate with
Mr. Rakesh Sobti, Advocate
for respondent No.2.

ARUN MONGA, J

1. Guru Devo Bhav! In Indian culture, a teacher is equaled and adorned next only to parents, in fact, even higher, next only to God, as a teacher molds future of his student and teaches meaning of life with intellectual inputs, while maintaining educational standards. Before proceeding with the case in hand, it would be apt to quote what the Hon'ble Supreme Court observed in **All India High School v. Government of A.P. (1980) 2 SCC478**, as below :-

“For maintaining educational standards of an institution, it is necessary to ensure that it is competently staffed. Conditions of service which

prescribe minimum qualifications for the staff, their pay scales, their entitlements to other benefits and the laying down of safeguards which must be observed before they are removed or dismissed from service or their services are terminated are all permissible measures of a regulatory character.”

2. Here is a case of a teacher, who having been kept in utter suspense and uncertainty since his appointment as a Professor in 2013, has been struggling with his employer (University) for enforcement of his legitimate right but, without success and driven eventually to the corridors of this Court.

3. The petitioner has, inter alia, challenged an order dated 25.02.2014 (Annexure P/8) passed by respondent No.1/Panjab University, which in turn, is based on impugned resolution dated 08.12.2013 (Annexure P/11), passed by Senate of the University, resolving to re-advertise the post of Professor in Orthodontics, held by the petitioner and meanwhile appoint him on contract/ad-hoc basis. The question herein is, can a process for regular appointment of an advertised post, once commenced and culminated, be later converted into a contractual appointment?

4. Briefly, the facts as borne out from the petition are as under:

4.1 An advertisement No.3/2012 (Annexure P-1), relevant reproduced below, was issued by Panjab University, Chandigarh, inviting applications, inter alia, for appointment to four regular posts of Professors, including one in Orthodontics:

*“Applications are invited from the eligible candidates for the following posts at **Dr. Harvansh Singh Judge Institute of Dental Sciences & Hospital**, P.U., Chandigarh, so as to reach the Deputy Registrar (Estt.), Punjab*

*University, Chandigarh by **03.04.2012:-***

- **Principal-Cum-Professor-1** (Grade Rs. 37400-67000 + GP of Rs.10000+ NPA as admissible)
- **Professors-4 (SC-1)** (Grade Rs. 37400-67000 + GP of Rs.10000+ NPA as admissible)

Oral Pathology-1 (SC), Oral Maxillofacial Surgery-1, Orthodontics-1, Prosthodontics-1.”

4.2 The petitioner who was then working and holding a permanent post in the same specialty with the MM University, Mullana (Ambala) and fulfilled the prescribed requirements, applied for the said regular post advertised by Panjab University. He was found eligible and invited for interview by the Selection Committee. As a pre-requisite thereof, he also obtained “No Objection Certificate” from his previous employer to appear for interview. After the interview, the petitioner was selected for the post.

4.3 The petitioner has asserted that during the interview, nothing at all was conveyed to him by the Selection Committee, that there was any deficiency in his candidature for regular appointment or that he was being selected not against 'regular post' but against a 'contractual post'. He further submits that, infact, at the relevant time, the Dental Institute of Panjab University was in urgent need of regular Professors, as it was preparing to start MDS course in Orthodontics, which was the teaching specialty of the petitioner. The University was facing imminent denial of the necessary recognition from the Dental Council of India.

4.4 An appointment letter dated 27.02.2013 (Annexure P3 colly) was issued to the petitioner by respondent No. 1. The relevant portion thereof, including the underlined text, which is bone of contention in the

present case, reads as under:-

*“The Vice-Chancellor, on the recommendations of the Committee constituted in accordance with the decision vide Para-XIV/Para-XL VII dated 22.12.2012 and in view of the authorization given by the Senate (vide paras referred above) has approved your appointment. So, I am desired to offer you the appointment as **Professor in Orthodontics at Dr. Harvansh Singh Judge Institute of Dental Sciences & Hospital, Panjab University, in the pay-scale of ₹37400-67000 + GP of ₹10000/- plus NPA as admissible for one year initially (not on regular basis). However, your terms and conditions and nature of appointment will be conveyed to you later.**”*

4.5 Petitioner was much perturbed and piqued by the vague terms of appointment conveyed to him (one year initially-not on regular basis), due to which he was reluctant to join the service of the respondent No. 1. However, on inquiry with the authorities of the respondent, he was assured that he should join the service without any inhibitions or reservations, as he had been selected against a regular post and would for all practical purposes be conveyed regular selection in due course. On such assurances, the petitioner submitted his resignation to his previous employer on 07.03.2013 (Annexure P-16) and the same was accepted on 13.03.2013 (Annexure P-17). Thereafter, he joined duty as a Professor, Orthodontics, with the respondent University.

4.6 The anxieties of the petitioner stood allayed once his employee status was notified on the website of the University, immediately after his joining in March/April, 2013. His employee status as shown therein was 'permanent employee'. In fact, only a permanent employee of the University, by feeding his PF code etc., can access the employee status on the

University website. The name of the petitioner was also reflected in the combined tentative seniority list of the entire University Professors at serial No. 190. Even his date of retirement was indicated as 30.06.1935 (sic 2035). Not only this, the petitioner was also allotted a Provident Fund account number, which is only allotted to regular/permanent employees. Thus, the petitioner had no doubt, whatsoever, left in his mind in view of his status notified on the web site of the University and the seniority list of the University professors, that he was a permanent/regular employee.

4.7 Notwithstanding, petitioner was neither paid salary as per advertisement nor exact terms of his appointment were conveyed despite lapse of 06 months from the date of appointment letter. The petitioner submitted a representation dated 12.09.2013 (Annexure P/6) to respondent No. 1 for doing the needful.

4.8 The said representation was considered, vide Agenda Item No. 4 (i) and (ii), in a meeting of the Syndicate held on 08.10.2013 and it was resolved as under:-

*“(1) **since the posts were advertised on regular basis**, the appointments of both the persons, i.e., Dr. Puneet Kapoor, Associate Professor/Reader in Anaesthesia and Dr. Deepak Kumar Gupta, Professor in Orthodontics at Dr. Harvansh Singh Judge Institute of Dental Sciences & Hospital, **be treated as regular on probation**; and*

(2) the condition/s imposed by the Selection Committees on the appointment of Dr. Hemant Batra and Dr. Arun Garg as Professor and Reader/Associate Professor respectively, be waived off and their appointment be treated on regular basis from the date of their eligibility.

Both (1) and (2) above be implemented in anticipation of the approval of the Senate.”

4.9 Pursuant to the decision of the Syndicate, another appointment letter dated 25.11.2013 (Annexure P7) was issued, stating that the same is being issued as per the decision of the Syndicate taken in its meeting held on 08.10.2013, but in anticipation of the approval of the said decision by the Senate. The relevant part of the said appointment letter is as under:

“In continuation of this office letter No. EST/13/1851-56/Estt-I dated 27.02.2013, in accordance with the decision of the Syndicate dated 08.10.2013 (Para 4) and in anticipation of the approval of the Senate, I am desired to offer you the appointment as Professor in Orthodontics at Dr. Harvansh Singh Judge Institute of Dental Sciences & Hospital, Panjab University, in the pay-scale of ₹37400-67000 + GP of ₹10000/- plus NPA as admissible (subject to the final outcome/decision of the Hon'ble Punjab and Haryana High Court, Chandigarh, in CWP No.17501 of 2011) on the following terms and conditions:-

1. Post: Your appointment will be on probation for one year from the date of joining. The period of probation can be extended in accordance with the Regulations of the University.

The competent authority could assign teaching duties to you in the same subject in other teaching department of the University in order to utilize your subject expertise/specialization and to meet the needs of the allied department at a given point to time, within the limits of the workload as prescribed in the UGC norms.”

4.10 After issuance of above letter of appointment, the Deputy Registrar of Panjab University, vide his letter dated 26.11.2013 (Annexure P/7 colly) specifically conveyed a decision of Syndicate to the petitioner in

following terms:

*“In partial modification to this office letter No. EST/13/1851-56/Estt.-I dated 27.02.2013 and in continuation to this office letter No. EST/13/9371-76/Estt.-1 dated 25.11.2013, it is to inform that the Syndicate in its meeting held on 08.10.2013 (Para 4), in anticipation of the approval of the Senate, has **RESOLVED** that:-*

“Since the post was advertised on regular basis, the appointment of Dr. Deepak Kumar Gupta, Professor in Orthodontics at Dr. Harvansh Singh Judge institute of Dental Sciences & Hospital, be treated as regular on probation.”

4.11 Thereafter, petitioner thus continued on regular basis and was paid salary benefits as a regular employee. He also made contributions to provident fund as permissible only to regular employees. Suddenly, impugned letter dated 25.02.2014 (Annexure P/8) was issued, in supersession of letter dated 26.11.2013, supra. The contents of impugned letter are as below:-

*“In super-session to this office letter No. EST/13/9398-9403/Estt.-1 dated 26.11.2013, the Senate in its meeting held on 08.12.2013 (Para VI) has **RESOLVED** that:-*

“the term of appointment of Dr. Deepak Kumar Gupta as Professor in Orthodontics at Dr. Harvansh Singh Judge institute of Dental Sciences & Hospital, appointed on contract basis for a period of one year, be extended for a period of six months in the first instance”.

4.12 Petitioner states that the impugned order dated 25.02.2014 (Annexure P/8) conveying the Senate's resolution dated 08.12.2013 has adverse and penal consequences against the petitioner. Petitioner states that he was neither given any opportunity of hearing nor issued any show cause

notice, either before passing the Senate's impugned resolution dated 08.12.2013 (Annexure P/11), converting the petitioner's appointment from regular to contractual or before issuing the impugned letter dated 25.02.2014 (Annexure P/8).

5. The University filed written statement stating that the post in question was advertised as single regular post. The stand taken is that the Senate is the supreme body of the Panjab University and every appointment/selection to class A post (professor included) is subject to the approval of the Senate. It has been stated that the Syndicate in its meeting held on 08.09.2012/06.10.2012, approved the appointment of the petitioner on contract basis for one year. Subsequently, the Vice-Chancellor, on the basis of authorization given by the Senate, vide its decision dated 22.12.2012, approved the petitioner's appointment on contract basis. Therefore, appointment letter dated 27.02.2013 had a clear rider that appointment was not on regular basis and the terms and conditions of the employment of the petitioner would be conveyed later.

6. As regards the Syndicate's subsequent resolution dated 25.11.2013 conveyed to petitioner vide letter dated 26.11.2013 (Annexure P/7) about his appointment on regular basis and issuance of appointment letter dated 25.11.2013 (part of Annexure P/7), the couched stand of the University is that the Syndicate while resolving the appointment of the petitioner to be on regular basis, had overlooked the recommendations of the Selection Committee, which had recommended his appointment on contract basis for one year.

7. In its written statement, the University also states that decision dated 26.11.2013, of the Syndicate did not find favour with the Senate and

the same was reversed vide Senate's resolution dated 08.12.2013. Senate's decision was conveyed to the petitioner vide impugned letter/order dated 25.02.2014. It is asserted that the Senate's resolution dated 08.12.2013 conveyed to petitioner vide impugned letter/order dated 25.02.2014, is in inconsonance with the recommendation of the Selection Committee.

8. Private respondent No. 2 moved an impleadment application, pursuant to which, he was impleaded vide order dated 03.02.2016. He filed written statement challenging the eligibility of the petitioner at the time of his selection and opposed the claim in petition.

9. I have heard the learned senior counsels appearing for the petitioner and respondent No.2 and learned counsel for respondent No.1 and gone through the pleadings and record of the case with their able assistance.

10. The learned Senior Counsel for the petitioner has argued on the legality and validity of the Senate's resolution dated 08.12.2013, whereby, the decision of the Syndicate dated 08.10.2013 was over turned. He also argued on the legality of the subsequent impugned letter dated 25.02.2014 (Annexure P/8) issued by respondent No. 1 through its Registrar, conveying that the petitioner's appointment would be on contract basis for a period of one year. He submits that the condition in subsequent appointment letter is not tenable as no show cause notice or opportunity of hearing was given to the petitioner, at any stage. He contends that the University was estopped by its act and conduct from changing the nature of petitioner's appointment to his detriment.

11. The lead contention of the University is that the petitioner was merely given contractual appointment, in view of the recommendation made by the Selection Committee, being solitary interviewee, who appeared for

interview before the Selection Committee.

12. Contesting the petition, the learned senior counsel for respondent No.2 has strenuously argued that there are three stages of procedure for appointment adopted by the Panjab University viz:

- a) advertisement,
- b) ratification by the appointing authority and
- c) appointment.

12.1 He further contends that the advertisement merely determined the eligibility for the post and the subsequent recommendation by the Selection Committee by itself does not confer any right of appointment on a candidate. He further argues that mere recommendation of the Selection Committee, unless approved by the Senate based on prior ratification, does not confer any right on a candidate to seek appointment. He argues that it is only after the second stage that a vested right of appointment can be sought to be enforced by the petitioner.

12.2 He points out that admittedly, the regular appointment of the petitioner was not approved by the Senate twice after due deliberations and the reasons thereof are recorded in the Senate proceedings, which have been placed on record before this Court. He further points out that once the Senate had disapproved the appointment of the petitioner on regular basis, the Syndicate, in a second round of deliberations, could not have sat in appeal over the decision of the Senate, which is a larger body, and therefore, the ratification/recommendation of the Syndicate is non est and any improvement in the first appointment letter, merely because Syndicate had recommended the same, cannot have any legal sanctity, unless approved by the Senate.

12.3 In support thereof, learned Senior counsel for respondent No.2

relies on three judgments, titled as *State of Bihar and others vs. Secretariat Assistant Successful Examinees Union 1986 and others*, reported as *AIR 1994 SC 736*, *Vijay Kumar Mishra and others vs. High Court of Judicature at Patna and others*, reported as *AIR 2016 SC 3698*, *State of Punjab and others vs. Saroj Devi Etc.*, reported as *(1981) ILR 2 P&H 43*.

12.4 He further points out that the second appointment letter flies in the face of Regulation 6.1 of the Panjab University Calender. For better appreciation, the relevant portion of the said Regulation 6.1 is extracted herein below:-

“xxx....the Committee shall interview suitable person and make recommendations which will be placed before the Syndicate. If the Syndicate does not accept the recommendation of the Selection Committee it may order re-advertisement of the post in case of direct recruitment or re-invitation of application in case of in-service promotion or take such other action as may be considered necessary. The Committee recommending a person for appointment as a Professor or Reader shall have regard to:

- (i) His capacity for research.*
- (ii) His ability as a teacher, and*
- (iii) Generally his eminence in the subject of his profession.*

The University may utilize a seminar or colloquium as a method for the selection of a Reader and Professor.”

13. Relying on the regulation *ibid*, learned Senior counsel for respondent No.2 argues that the Resolution of Syndicate passed in its meeting dated 08.10.2013 could not have been passed by it, as the Syndicate can only reject or accept the recommendations made by the Selection Committee and cannot superimpose its own opinion. He contends

that once the Selection Committee had recommended the petitioner's appointment on contract basis, his appointment on regular basis could not have been ratified by the Syndicate.

14. Learned Senior counsel also points out that the Agenda No.4 of the Syndicate meeting was only meant for taking a decision on the terms and conditions of making appointment on *ad hoc* basis. The said Agenda could not have been changed in course of the meeting, without prior notice to the Members of the Syndicate, and therefore, any decision taken beyond the scope of the agenda, per se, is void *ab-initio*. In support thereof, he relies upon the judgments, titled as **Guru Nanak Education Trust (Regd.), Model Town, Ludhiana and others vs. Sh. Balbir Singh and others**, reported as AIR 1995 P&H 290, **Partap Singh vs. State of Haryana**, reported as 2014 (2) SCT 495 (P&H) and **Nasib Chand vs. State of Punjab and others**, (CWP 12416 of 2013, Punjab & Haryana High Court)

15. Lastly, he argues that the resolution passed by the Senate in its meeting dated 08.12.2013, which has been impugned by the petitioner, is based on the reasoning as noted in the Senate proceedings (Annexure R/5). He particularly lays emphasis on the following minutes of Senate meeting:-

“xxx... Only single candidate appeared in the interview for both the posts. After interviewing the candidates and taking into consideration their academic record, teaching & research experience, publications and other academic contribution, the Selection Committees recommended appointment of both Dr. Deepak Kumar Gupta as Professor in Orthodontics and Dr. (Ms.) Puneet Kapoor as Associate Professor/Reader in Anaesthesia on contract basis and ad hoc basis, respectively, for one year. The Selection Committees did not find any person suitable for appointment on regular

basis. Hence, they recommended appointments on contract and ad hoc basis, that too, for one year.....xxx.”

xxx.... When a person is appointed on contract/ad hoc basis for a period of one year, how his/her services could be regularized? As per Regulation 6.1 at Page 112 of Panjab University Calendar, Volume 1, 2007, the Syndicate could either accept or reject the recommendations of the Selection Committees, but had no power to convert appointment from contract/ad hoc basis to regular basis. She, therefore, pleaded that these posts should be re-advertised; otherwise, it would bring frustration amongst the faculty members who have been appointed on contract/ad hoc basis and continuing as such. Secondly, it might lead to litigation against the University. She reiterated that all these posts should be re-advertised and the persons, who have been appointed on contract/ad hoc basis, should compete with other competitors. To avoid frustration amongst the staff, this item should not be approved.”

16. To sum up his arguments, learned Senior counsel for respondent No. 2 submits that, the appointment of the petitioner is on contractual basis in view of the fact that the Selection Committee did not find him suitable for regular appointment, as also in view of the long standing practice of the University, to appoint eligible candidates on contract/ad hoc basis, in case, they are not found suitable for regular appointment or even otherwise in view of shortage of staff.

17. In support of his arguments of long standing practice adopted by the University, he relies on a judgment rendered in case title as **Dr. Sudha Suri v. Union of India (UOI) and others**, reported as 2002 (2) SCT 63 (P&H).

18. As regards eligibility, it is a conceded position that respondent

No.2 himself was not eligible to apply for this post, at the relevant time, when the University issued the advertisement for selection to the post of Professor (Orthodontics). As far as the argument of petitioner's eligibility is concerned, it is an admitted position, as per the pleadings of PU/respondent No. 1, that the petitioner was eligible. Therefore, he could not have been non suited on the ground of not being eligible. Another aspect of the matter is that, even the Selection Committee did not, anywhere, point out that the petitioner was not eligible for the post, as is reflected from the minutes of the Selection Committee, wherein, it has been affirmatively stated, in no uncertain terms, that they found the petitioner eligible. If respondent No.2 is aggrieved, in any manner, by the action of the University or of the Selection Committee, to have found the petitioner eligible, it will be open to him to challenge the same through appropriate proceedings.

19. It is irrefragable position that the advertisement in the present case did not use the expression 'appointment on contractual or *ad hoc* basis or not on regular basis'. In fact, the candid stand taken by the University in its written statement is that the advertisement was for 'regular post'.

20. The learned Senior counsel appearing for the petitioner strongly relies on a Single Bench judgment rendered by Delhi High Court (re-affirmed in appeal by Division Bench), titled as **Dr. Amrish Chanana and others vs. Government of NCT, Delhi**, reported as 2014 (7) RCR(Civil) 1311. On perusal thereof, I am of the view that petitioner's case is covered by Delhi High Court judgment, (supra), relevant portion whereof is extracted herein below:

“xxx... Once there are sanctioned posts and the appointments were through the regular recruitment process of duly qualified persons against the vacancies

in the sanctioned posts, I would definitely not like to read the appointment letters when it uses the expression “temporary basis” to mean as if appointments are only on contractual basis. To buttress this point I would like to emphasize that there is nothing mentioned in the Circular of the Government of NCT of Delhi dated 05.06.2006 that the respondent No. 2 will appoint persons on contractual basis. Appointments in terms of the Circular dated 05.06.2006 was against sanctioned posts and once appointment is to sanctioned posts through regular recruitment by clearing of examination and clearing of interview conducted by the Selection Committee, the appointments would in my opinion be regular appointments; and definitely not contractual appointments.

As an epitaph I must put on record my unhappiness with the stand taken by respondent No. 2 in view of the unimpeachable documents stated above which have come on record showing creation of sanctioned posts and appointments of qualified persons through regular recruitment process. After all many of the petitioners had left their permanent jobs with various organizations including certain State Governments to take appointments to the posts in respondent No. 2. No reasonable person can read the appointment letters as petitioners having been appointed on contractual basis. I have in any case definitely refused to do so in the categorical facts which have emerged in the present case... xxx”.

21. The above sentiments of the learned Single Judge are echoed in Delhi High Court's Division Bench judgment, **Government of NCT, Delhi vs. Dr. Amrish Chanana and others** decided on 09.05.2016, in the following terms:-

“Having regard to these circumstances, the contention urged that Tibbia college framed norms and rules that would have by a reference applied to the society in this case and that should be the basis for holding that the respondents' appointments were not regular, in the opinion of this court is not only insubstantial but misconceived; as long as the final appointment is preceded by a fair procedure i.e. existence of vacancies notified and published widely to enable eligible candidates to compete for the post. The candidates appointed in fact were selected by such procedure, the existence or otherwise of norms in other institutions-or rather the framing of norms subsequently could not have been the basis for holding that the respondents' appointment were not regular.”

22. The impugned Senate resolution dated 08.12.2013 (Annexure P-11/R-5) and the impugned letter dated 25.02.2014 (Annexure P/8) of respondent No. 1, conveying Senate resolution to the petitioner are sought to be defended by the respondents essentially on the ground that the same were in consonance with the recommendations of the Selection Committee, which had recommended the appointment on contract basis and also on the relevant reasons recorded in minutes of deliberations of the Senate meeting of 08.12.2013.

23. Let us now see if the recommendation of the Selection Committee was for making the appointment on contract basis. Respondent No. 2 has filed a photostat copy of the minutes of the Selection Committee (Annexure R/6). The relevant part thereof is as under:

“The following candidate attended the interview:

Dr. Deepak Kumar Gupta.

The following candidate did not attend the interview:

Dr. Vinay S.Dua.”

After interviewing the candidate and taking into consideration his academic record, teaching and research experience/publications and other academic contributions, the Selection Committee recommends that the following person be appointed as Professor in Orthodontics-I at Dr. H.S.J.Institute of Dental Sciences & Hospital, Panjab University, Chandigarh on one year's probation in the pay scale of Rs.37400-67000+GP of Rs.10000+NPA as admissible, on the pay to be fixed according to rules of Panjab University.(Typed Portion).

Dr. Deepak Kumar Gupta on contract basis for one year (Handwritten line)."

24. As is evident from the overall text upto the penultimate line of these minutes, except name of the candidate- "Dr. Deepak Kumar Gupta"- nothing more was supposed or required to be written in the last line. Further, while the main body text up to the said penultimate line shows that the Selection Committee had recommended the petitioner's appointment on one year's probation, but the handwritten text in the last line states that his appointment is on contract basis for one year. It is obvious that the words "on contract basis for one year", written by hand, in the last line of these minutes, were/are totally contradictory to and destructive of the preceding main body text of the minutes, recommending the petitioner's appointment on one year's probation. On reading the overall text of these minutes, I am of the opinion that its real and true meaning, import and intent was/is that the Selection Committee had recommended the petitioner's name for appointment on one year's probation and there is no reasonable scope or warrant for interpreting the text so as to mean that the Selection Committee had recommended the petitioner's appointment on

contract basis for one year. Even otherwise, to be noted here that as per conditions of service of University Employees, every appointment, which is approved by the Senate, has to be made on probation for a period of one year. For ready reference, Rule 5 of Conditions of Service of University Employees is reproduced herein below:-

5. Every appointment whether by direct recruitment or by promotion or by any other method approved by the Senate, shall be made on probation for a period of one year, which may be extended by the appointing authority for a period not exceeding one year. The appointing authority may, however, grant exemption in exceptional cases.

25. It is settled principle of service jurisprudence that if a document is capable of two interpretations- one favourable and the other against, the Courts would accept the view favouring the employee. Therefore, even assuming, without holding, that the minutes of the Selection Committee were also capable of being interpreted to mean that it had recommended the petitioner's appointment 'on contract for one year', still I would adopt and go by the former interpretation of the recommendation rather than later. I hold that the Selection Committee had recommended the petitioner's name for appointment on one year's probation i.e. regular basis and not on contract basis.

26. There are also other reasons for holding so:

26.1 The role of the Selection Committee was confined to determination of eligibility, suitability and selection of candidates for appointment as per the requirements in the advertisement and recommending them to the employer for appointment. The Selection Committee, having found the petitioner eligible and suitable, had selected

him for the post, and simply had to recommend his name to the prospective employer for appointment and no more. It (the Selection Committee) could not assume the larger and higher function of an appointment committee/authority to suggest change for appointment of the candidate on contract basis, even though the process of selection was for appointment on regular basis. A perusal of the minutes/recommendation Annexure R-2/II of the Selection Committee also reflects that it is nowhere stated therein that the petitioner was not suitable for the post as advertised. The Selection Committee after having found him suitable and eligible as per the advertisement and having found him fit for appointment after interview, if it at all had supposedly recommended that the petitioner be appointed on contractual basis, then in such case, the same would be liable to be questioned on the ground that the Selection Committee clearly exceeded its role and function and took upon itself the task of an appointment committee/authority.

27. It is not shown if, besides the recommendations of the Selection Committee, the Syndicate had before it and/or considered any other material before passing its resolution dated 08.09.2012/06.10.2012 (Annexure R/1) (for appointment on contract basis). It has been found/held, for reasons stated herein before that the Selection Committee's recommendation was for the petitioner's appointment on one year's probation and not on contract basis. In view of this, I hold that the Syndicate's resolution dated 08.09.2012/06.10.2012 Annexure R/1 (for appointment on contract basis), proceeded on a non-existing basis and is bad in law to the extent of its inconsistency with the Selection Committee's recommendation (for appointment on probation i.e regular appointment),

and, therefore, is not sustainable.

28. As regards the reliance on the judgments in support of arguments of the learned Senior Counsel for respondent No. 2 that mere eligibility and selection by the Selection Committee pursuant to the advertisement for regular post does not confer any right of appointment on the petitioner, the learned senior counsel appearing for the petitioner submits that same are not applicable in the present case. He states that in all the judgments relied by the learned senior counsel for respondent No.2, none of the candidates were issued any appointment letter. He states that in the present case, the appointment letter was issued, and therefore, the case is totally covered by the Single Bench judgment of Delhi High Court as affirmed later by the Division Bench, supra.

29. Learned senior counsel for the petitioner submits that the petitioner cannot be non-suited on the ground that he had accepted the appointment and waived his rights to question the terms and conditions thereof. He relies on the judgment rendered in ***R.S. Rawat vs. State of Rajasthan***, reported as 1993 (3) S.C.T. 303 and submits that there cannot be any acquiescence or estoppel or waiver on the fundamental rights as envisaged in Article 14 of the Constitution of India. He contends that the petitioner's claim can not be negated on the ground that having once accepted his appointment 'not on regular basis', he could not have challenged the same, and therefore, he was bound by the terms of the original appointment letter. For better appreciation, the relevant portion of the judgment of Rajasthan High Court, as relied by learned Senior counsel for the petitioner, is reproduced as below:-

“XXX....In the present case it has clearly been established that a regular selection had been made by

issue of advertisement inviting of applications and consideration of the candidature of all eligible persons by a duly constituted Selection Committee. It must therefore be held that the appointment of the petitioner on the post of Lower Division Clerk was in the nature of regular and substantive appointment and the mere use of the word 'ad hoc' or the mere fact that term of appointment was specified in annexure-2 will make no difference.

It cannot be ignored that in our country the doctrine of Lassaize Faire has not been accepted and the employer does not have an absolute freedom in the matter of laying down the terms and conditions of employment. Even if the employer settles terms and conditions of employment which are unfair, arbitrary or opposed to public policy, the same are not binding on the employee. Such terms and conditions cannot be enforced against the employee. The employee can seek a declaration of invalidity against such terms and conditions on the ground that the conditions are arbitrary and unreasonable.

xxxx

“In view of this pronouncement of Supreme Court, there can be no doubt that if the court finds that the terms and conditions contained in the letter of appointment or the offer of appointment, are wholly arbitrary and unreasonable, the same can be declared as invalid. In the present case I have already held that the nature of appointment of the petitioner has to be treated regular and substantive. Therefore the use of the word 'ad hoc' and fixing of a term of employment upto 30.4.91 are inconsequential. Logically it must be held that these conditions are invalid and are not binding on the petitioner.

The argument of the respondents about estoppel is

being mentioned by me only to be rejected. An employee who is offered employment after selection has no option but to accept the employment on whatever conditions it is offered. The employee cannot possibly enter into a bargain about the terms and conditions of employment, even before entering the service. If he does so there is every likelihood of his appointment being rendered still born. Therefore the mere fact that the employee accepts the terms of the contract embodied in the letter of appointment, he cannot be denied remedy by the court.”

30. The learned Judge of Rajasthan High Court relied on an Apex Court judgment and further observes as under:-

“In Central Inland Water Transport Corporation v. Brojo Nath Ganguli, (1986 (3) S.C.C.156) their Lordships of the Supreme Court gave a new dimension to the powers of the Court to strike down the terms and conditions of a contract of employment on the ground that the same is unconscionable or unfair. After making a lucid analysis of Articles 14, 39(a) and 41 of the Constitution of India and Section 23 of the Contract Act, 1872, the Supreme Court held:

“An unconscionable bargain or contract is one which is irreconcilable with what is right or reasonable or the terms of which are so unfair and unreasonable that they shock the conscience of the Court.

The doctrine of distributive justice is another jurisprudential concept which has affected the law of contracts. According to this doctrine, distributive fairness and justice in the possession of wealth and property can be achieved not only by taxation but also by regulatory control of private and contractual transactions even though this might involve some sacrifice of individual liberty. This doctrine has found constitutional recognition through the Preamble and

Articles 38 and 39.

The test of reasonableness or fairness as a clause in a contract where there is inequality of bargaining power is another theory recognised in the sphere of law of contracts. The Courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or a clause in a contract entered into between parties who are not equal in bargaining power. Lord Diplock in A. Schroeder Music Publishing Co. case has given the test of fairness thus: 'Whether the restrictions are both reasonable necessary for the protection of the legitimate interests of the promisee and commensurate with the benefits secured to the promiser under the contract. For the purpose of this test all the provisions of the contract must be taken into consideration.' This is in consonance with right and reason, intended to secure social and economic justice and conforms to the mandate of the great equality clause in Article 14. There can be myriad situations which result in unfair and unreasonable bargains between parties possessing wholly disproportionate and unequal bargaining power. These cases can neither be enumerated nor fully illustrated. The Court must judge each case on its own facts and circumstances.”

31. Learned Judge of Rajasthan High Court quoted another Apex Court judgment as below:-

*“A similar argument was advanced before Hon'ble Supreme Court in **Government Branch Press v. D.B.Belliappa (1979(1) S.C.C. 477)**. Rejecting such argument their Lordships observed:-*

“Another facet of Mr. Veerappa's contention is that the respondent had voluntarily entered into a contract of service on the terms of employment offered to him. One of the terms of that contract, embodied in the

letter of his appointment is that his service was purely temporary and was liable to termination at the will and pleasure of appointing authority, without reason and without notice. Having willingly accepted the employment on terms offered to him, the respondent cannot complain against the impugned action taken in accordance with those mutually agreed terms. The argument is wholly misconceived. It is borrowed from the archaic common law concept that employment was a matter between the master and servant only. In the first place, this rule in its original absolute form is not applicable to Government servants. Secondly, even with regard to private employment, much of it has passed into the fossils of time. "This rule held the field at the time when master and servant were taken more literally than they are now and when, as in early Roman Law, the rights of the servant, like the rights of any other member of the household, were not his own, but those of his pater families." The overtones of this ancient doctrine are discernible in the Anglo-American jurisprudence of the 18th century and the first half of the 20th century, which rationalised the employer's absolute right to discharge the employee. "Such a philosophy", as pointed out by K.K.Mathew, J. (vide his treatise: "Democracy, Equality and Freedom, page 326), "of the employer's dominion over his employee may have been in tune with the rustic simplicity of bygone days. But that philosophy is incompatible with these days of large, impersonal, corporate employers'. To bring it in tune with vastly changed and changing socio-economic conditions and mores of the day, much of this old, antiquated and unjust doctrine has been eroded by judicial decisions and legislation, particularly in its application to persons in public employment, to whom the Constitutional protection of Articles 14, 15, 16 and 311 is available.

The arguments is therefore overruled.”

32. I find that the arguments of the learned Senior counsel for the petitioner are fair and reasonable. I am also in complete agreement with the view taken in Rajasthan High Court judgment, *ibid*.

33. As far as the argument of learned Senior counsel for respondent No.2 as also learned counsel for the University that the Syndicate ought not and could not have sat in appeal over the decision taken by the Senate (for appointment on contract basis), as Senate is the supreme and larger body of Panjab University, and therefore, the decision of the Syndicate (for regular appointment) over ruling the decision of the Senate (for appointment on contract), was beyond the jurisdiction vested with the Syndicate. In principle, I am fully in agreement with the argument that the decision of the Syndicate in supersession of a valid decision of the Senate would be beyond the Syndicate's jurisdiction. However, that does not confer legitimacy to the impugned decision taken by the Senate in the present case.

34. For determining the validity or otherwise of the Senate's first resolution dated 22.12.2012/20.01.2013 (Annexure R/2) and the impugned second resolution dated 08.12.2013 (Annexure P-11/Annexure R-5), it seems necessary to examine step by step the Syndicate's initial resolution dated 08.09.2012/06.10.2012 (Annexure R/1), the Senate's first resolution dated 22.12.2012 (Annexure R/2) and its impugned second resolution dated 08.12.2013 (Annexure P-11/Annexure R-5).

35. For the reasons given earlier, it has been held above that the Selection Committee had recommended the petitioner's name for appointment on one year's probation and not on contract basis. It is not shown what other material, if any, weighed with the Syndicate, for

resolving vide resolution Annexure R/1 that the petitioner's appointment be made on contract basis. The said resolution of the Syndicate is clearly against the recommendation of the Selection Committee. In view of this, the Syndicate's initial resolution dated 08.09.2012/06.10.2012 (Annexure R/1), to the extent of its inconsistency (for appointment on contract basis) with the recommendation of the Selection Committee (for appointment on probation i.e. regular basis), is not sustainable and has to be, therefore, overlooked.

36. Now coming to the Senate's resolution dated 22.12.2012/20.01.2013 (Annexure R/2).The relevant text of the said resolution is as under:

“The recommendations of the Syndicate contained in item 14 and 15 were read out and unanimously approved i.e. –

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XIV. The recommendations of the Syndicate contained in item C-16 on the agenda were read out, i.e. –

C-16. That the appointment and waiting list of the persons to the posts and pay scales noted against their names be approved as under:-

<i>Sr.No</i>	<i>Person/s recommended for appointment</i>	<i>Post/s</i>	<i>Pay-scale</i>	<i>Pay per month</i>
Xx	Xx	Xx	Xx	xx
20	Dr. Deepak Kumar Garg	Professor in Orthodontics (on contract basis for one year)	Rs. 37400-67000+GP of Rs. 10000/- plus NPA as admissible	On a pay to be fixed according to the rules of Panjab University

$$X_x$$

XXX

RESOLVED that all these appointments be approved subject to the condition that the candidates were eligible on the last date of submission of applications and a Committee be constituted by the

Vice-Chancellor to ascertain the above condition and to ensure that the score have been awarded to various candidates uniformly considering their qualifications and experience at the time of interview. The Senate authorized the Vice Chancellor to take decision on the recommendations of the Committee on behalf of the Senate.”

37. The Senate passed its resolution dated 22.12.2012/20.01.2013 (Annexure R/2), on the lines of the Syndicate's initial resolution dated 08.09.2012 (Annexure R/1), for the petitioner's appointment on contract. It has been found, for the reasons stated above, that the Syndicate's said initial resolution dated 08.09.2012 (Annexure R/1), to the extent of its inconsistency with the recommendation of the Selection Committee, is not sustainable and has to be overlooked. The Senate's resolution dated 22.12.2012/20.01.2013 (Annexure R/2), for the appointment to be made on contract basis, though also claimed to be in consonance with the recommendation of the Selection Committee, was/is in fact contrary to the true meaning, import, intent and spirit of the recommendation of the Selection Committee as mentioned above. The reasons for holding that the Syndicate's initial resolution dated 08.09.2012 (Annexure R/1), is bad in law, to the extent of its inconsistency, apply, mutatis mutandis, to the Senate's resolution dated 22.12.2012/20.01.2013 (Annexure R/2). For the same reasons, it is held that the Senate's resolution dated 22.12.2012/20.01.2013 (Annexure R/2), is bad in law and not sustainable to the extent of its inconsistency (for appointment on contract basis) with the recommendation of the Selection Committee (for appointment on probation i.e. regular basis) .

38. It has already been held that the Selection Committee had recommended the petitioner's name for appointment on one year's

probation i.e. regular basis and not on contract basis. It has also been held in the preceding part of this judgment that the Syndicate's initial resolution dated 08.09.2012/06.10.2012 (Annexure R/1) and the Senate's first resolution dated 22.12.2012/20.01.2013 (Annexure R/2) (for appointment on contract basis), are not sustainable being bad in law, to the extent of their inconsistency with the Selection Committee's recommendation (for appointment on probation i.e regular appointment).

39. Premised in this background, to my mind, the reasons given in the minutes of meeting dated 08.12.2013 (Annexure R/5) of the Senate, do not hold ground and are untenable and not acceptable to justify or validate the conversion of the petitioner's appointment from regular basis into one on 'contract basis' for variety of reasons. Firstly, it sounds quite odd and illogical to say that the petitioner who fulfilled the prescribed requirements and eligibility criteria for regular appointment, though found suitable for appointment on contract basis, was not found suitable for regular appointment. Secondly, the petitioner's suitability for regular appointment could not be nullified or negated and turned into unsuitability simply because he was the single candidate who had appeared before the Selection Committee for interview. Thirdly, even assuming, without holding, that the Selection Committee had found the petitioner not suitable for regular appointment to the post as advertised and for which he was interviewed, then the Selection Committee was required to record its conclusion/observation to that effect in the relevant minutes.

40. The fact is that there is not even a whisper to that effect in the relevant recommendation/minutes (Annexure R-2/II), of the Selection Committee. Further, if the petitioner was not found suitable for regular

appointment to the post, then the Selection Committee by recording that opinion/conclusion, was simply required to inform respondent No. 1 accordingly. The latter could/would then proceed afresh for re-advertising the vacancy either for appointment on regular basis or, if need be, on contract basis by specifying appropriate parameters. In that case, it would have been certainly open to the University to say that the entire earlier selection process for appointment to the regular post of Professor had been scrapped due to non availability of any suitable candidates for the job. However, nothing like this was done in this case.

41. The reasoning in the minutes of the Senate's meeting (*i.e. only single candidate appeared in the interview for the post*) and as canvassed by the learned Senior Counsel for respondent No. 2 to justify the impugned resolution of the Senate, does not convince me. I, therefore, repel the contention that since the petitioner alone had appeared for interview for the post, the Selection Committee had recommended his appointment on contract and on that basis, the Senate had rightly passed its impugned resolution dated 08.12.2013 for appointment on contract basis.

42. Admittedly, the advertisement was for regular position. It is not in dispute and is also obvious from the letter of petitioner's appointment dated 27.02.2013, that the same contains no indication of the appointment being on contract basis. Even the written statement filed by respondent-Panjab University states as below:-

*"That at the very outset it is humbly and respectfully submitted that the answering Respondent **University advertized a single Regular post for Professor-Orthodontics** vide Advertisement No.3/2012, among various other posts at Dr. Harvansh Singh Judge Institute of Dental Sciences and Hospital, PU, Chandigarh. In response to the said*

Advertisement, besides the petitioner, one Dr. Vinay Dua had also submitted his application and both of them being eligible as per the advertised qualifications, were called for interview but Dr. Vinay Dua did not appear in the interview on 13.6.2012 and the Selection Committee interviewed only the petitioner.”

43. There seems substance in the submission of the learned Senior Counsel for the petitioner that the respondent University by advertising the vacancy for regular appointment and issuing the letter of appointment dated 27.02.2013 (Annexure P/3), without indicating that the appointment was on contract basis for one year, followed by its act and conduct as mentioned above, had represented to the petitioner that his appointment was on regular basis. He contends that following this, the petitioner resigned his earlier permanent job and took up and joined and then continued to work on his new appointment under respondent No. 1. He contends that after the petitioner had thus altered his position, subsequently respondent No.1 cannot be allowed to somersault and say that the appointment of the petitioner was on contract basis because the Selection Committee had recommended and the Senate too had decided like that. There seems substance in his argument that respondent No. 1 is barred by the principles of estoppel from converting the petitioner's regular appointment to one on contract basis.

44. The conversion of the petitioner's appointment on regular basis into one on contract basis, it is obvious, has long term adverse affect on the life and career of the petitioner. The principles and rules of natural justice, equity and fair play required that the petitioner should have been afforded an opportunity of showing cause and/or given a hearing before taking such a harsh decision against him. Concededly, no opportunity of

showing cause and hearing was given to the petitioner at any stage. The Senate's impugned resolution dated 08.12.2013 (Annexure P/11 /Annexure R/5) thus, suffers from the vice of violation of the principles and rules of natural justice, equity and fair play. On that account also, to the extent of its contents showing the petitioner's appointment to be on contract basis, cannot be sustained in law.

45. Agreed, as contended by the learned Senior Counsel for respondent No. 2, that the Senate had the statutory powers to correct the mistakes of the concerned functionaries of the University as also those of the Syndicate. However, the Senate was required to act in accordance with law. It could not, in supposed exercise of its statutory power, take a decision which itself is bad in law and has no basis and/or is based on patent misconstruction of the material relied upon. The statutory power given to the Senate, to correct the mistakes of the University functionaries, did not relieve it of its obligation to act according to law and to follow the basic principles and rules of natural justice, equity and fair play, before taking the impugned decision having life long adverse effect against and on the career of the petitioner. The illegality of the impugned resolution cannot be ignored merely because it was passed by the Senate in exercise of its statutory powers.

46. The impugned letter/order dated 25.02.2014 (Annexure P/8) issued by respondent only conveyed to the petitioner the Senate's impugned resolution dated 08.12.2013, except the text "In the meantime, these posts be re-advertised on the same pattern and conditions as were in 2011". It has been held above that the Senate's impugned resolution dated 08.12.2013 (Annexure P/11 /Annexure R/5), is bad in law to the extent of

its content that the petitioner's appointment was on contract basis.

Consequently, I also hold that the impugned letter/order dated 25.02.2014 (Annexure P/8), issued by respondent, to the extent of its contents showing that the petitioner's appointment was on contract basis, is bad in law and therefore, the consequential re-advertisement of the post held by petitioner is equally bad in law.

47. Learned counsel for respondent No. 1 states that there are numerous other cases in which the University had advertised the vacancies for regular appointment but made the appointments on contract basis. He submits that if the instant petition is allowed, it will open a pandora's box and flood gate of litigation against respondent No. 1, which in turn would have serious functional and administrative ramifications. His submission is that, if at all the petition is to be allowed, the same should not be made a precedent for other such cases. In my view, an illegality can not be condoned merely for the fear of it being cited as a precedent. In any case, each case is to be adjudicated on its own merits, depending upon the facts and circumstances involved therein.

48. As a result of the above discussion/observations and conclusions and in the peculiar circumstances of the case, the writ petition is allowed in following terms:

- a. The Senate's impugned resolution dated 08.12.2013 (Annexure P/11), pursuant to recommendation of Syndicate contained in item C-6 on the agenda, is quashed to the extent of its contents showing that the petitioner's appointment is on contract basis;
- b. The impugned letter/order dated 25.02.2014 (Annexure P/8), issued by respondent No.1 is also quashed to extent of its content showing that the

petitioner's appointment is on contract basis.

- c. Respondent No. 1 is directed to give/allow to the petitioner all consequential benefits flowing from the directions given at (a) and (b) above by treating the appointment of petitioner as regular.

49. No order as to costs.

February 07, 2019
smriti

(ARUN MONGA)
JUDGE

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