

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

CWP-11223-2018

Date of Decision: 01.11.2019

Sanjay Mandal

... Petitioner

vs.

Indian Institute of Science Education and Research and Others

.. Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. K.K.Gupta, Advocate
for the petitioner.

Ms. Siresh Gupta, Advocate
for respondent No.2.

ARUN MONGA, J.(ORAL)

Inter alia, impugned herein, is appointment letter dated 20.10.2014 (Annexure P-7) to the extent that appointment has been made on contract and not on regular basis. Subsequent order dated 26.10.2017 (Annexure P-13) whereby private respondent No.3 has been appointed as Head of Department by ignoring the prior right of the petitioner being Senior to respondent No.3 is also assailed.

2. I have heard the rival contentions of the learned counsels and have perused the pleadings as also the record appended thereto.

3. A perusal of Advertisement (Annexure P-5) for the post of Professor would reveal that the same was advertised for regular appointment and not on contract. In fact, the said position is fortified from an earlier advertisement (Annexure P-1) published in the year 2007 whereby certain posts were advertised and it was specifically stated that the post of Lecturer was on contract while for Assistant Professor/Associate Professor and

Professor, no such words were suffixed as in the case of Lecturer. Even in the earlier round, petitioner had participated for the selection to the post of Assistant Professor and subsequent thereto, an appointment letter was issued, in tune with advertisement, to him stating that he was appointed to the regular post of Associate Professor. Subsequently, petitioner successfully completed his probation period and he was confirmed as Associate Professor vide letter/order dated 12.05.2010 (Annexure P-4) with effect from the date he was originally appointed.

4. To the contrary, when the petitioner was selected as Professor, he was issued an appointment letter dated 20.10.2014 which, much to his chagrin, stated that he was being appointed on contract for a period of five years. The advertisement did not state any such thing. It would be apposite to reproduce relevant of the advertisement as below:-

“Faculty Positions (Rolling Advertisement)

IISER Mohali invites applications from eligible candidates for the post of:

Assistant Professor (Rs.12000-420-18300), Associate Professor (Rs.16400-450-20,000) and Professor (Rs.18400-500-22400)

Biological Sciences, Chemical Sciences, Mathematical Sciences, Physical Sciences, Earth & Environmental Sciences and Humanities & Social Sciences. In HSS the major areas for recruitment are History and Philosophy of Science, Sociology and English Communication.

The pay carries all other allowances as admissible to a Central Government employee stationed at Chandigarh/Mohali. The total pay works out to be approximately double the basic pay at this point in time.”

5. A perusal of the aforesaid would clearly reveal that the post was advertised for being filled up on regular basis. Not only this, when the case of the petitioner was put up before the Board of Governors by the Director for appointment as Professor, even the Board of Governors recommended his appointment on regular basis as is borne out from Agenda

Item 14.19.12 which for ready reference is reproduced hereinbelow:-

“B.O.G. 14.19.12 a) Faculty Appointments:

1. Regular:

<i>Sr. No.</i>	<i>Name of Faculty Member</i>	<i>Date of Joining</i>	<i>Background</i>	<i>Research Area</i>
1.	Dr. Arijit K De	29.10.2014	Ph.D from IIT Kanpur, 2005 Post-Doctoral Fellow at Lawrence Berkeley National lab, California since August 16,2010 to April 30,2014	Ultrafast non-linear spectroscopy and fluorescence microscopy
2.	Dr. Sanjay K. Mondal	27.10.2014	Ph.D from Texas A&M University, College Station, Texas, USA, 1992 Associate Professor at Indian Institute of Science Education and Research Mohali since August 18,2008	Organometallic Chemistry & X-ray Diffractometry
3.	Dr. Kaushik Chattopadhyay	23.12.2014	Ph.D from National Institute of Cholera and Enteric Diseases, Calcutta, 2003 Assistant Professor at Indian Institute of Science Education and Research Mohali since March 30,2009	Protein Structure-Function Studies

6. Notwithstanding the above, petitioner was issued an appointment letter on contract basis. Aggrieved, petitioner submitted his representation/protest letter dated 04.11.2014 (Annexure P-10) followed by representations dated 05.01.2015 and 15.03.2018 (Annexures P-11 and P-12). His grievance was eventually redressed and by subsequent order/letter dated 29.08.2018 (Annexure R-1) but only to the limited extent that his appointment was modified on regular basis instead of contractual with effect from 11.12.2017 and not from the date he was originally appointed as Professor.

7. The aforesaid sequence of events clearly reflects that the

respondent-Institute was conscious of the fallacy in issuing the appointment letter on contract basis and having realized the same, it subsequently modified the appointment of the petitioner. As far as not granting the benefit of regular appointment with effect from the original date i.e. 20.10.2014, the only bald explanation rendered in the return filed by the respondent-Institute is that the benefit is being conferred with effect from the date clarifications were received from Ministry of Human Resource Development. The said stand of the respondent-Institute is not sustainable in law.

8. The advertisement as well as recommendation of Board of Governors clearly indicate that not only the posts were advertised on regular basis but also the appointment thereto were recommended/directed by the Board of Governors on regular basis and yet the Director of Institute while issuing the appointment letter to the petitioner surreptitiously introduced the Clause saying that the appointment is being made on contract basis for five years.

9. Furthermore, a candid stand taken by the Institute in its return is that when the representations/protest letter of the petitioner were forwarded for clarifications to Ministry of Human Resource Development, Government of India, which in turn sought comments from Ministry of Home Affairs and based on the comments/letter dated 11.12.2017 of the Home Ministry, the MHRD issued necessary clarifications. The said clarifications though have not been produced on record but there is no gain saying that clarifications are merely a continuation of what already exists and does not change the substance of the matter and is made only for the purpose of removing an ambiguity on pre-existing situation and does not create a new situation. In this context, reference may be had to Apex Court

judgment titled as Union of India and Ors. vs. N.R.Parmar and Ors.,

reported as 2012 (13) SCC 340, the relevant part whereof is extracted

hereinbelow:-

“26. Before examining the merits of the controversy on the basis of the OM dated 3.3.2008, it is necessary to examine one related submission advanced on behalf of the direct recruits. It was the contention of learned counsel, that the OM dated 3.3.2008 being an executive order issued by the Department of Personnel and Training, would apply only prospectively. In this behalf it was pointed out, that the disputed seniority between rival parties before this Court was based on the appointment to the cadre of Income Tax Inspectors, well before the OM dated 3.3.2008 was issued. As such, it was pointed out, that the same would not affect the merits of controversy before this Court. We have considered the instant submission. It is not possible for us to accept the aforesaid contention advanced at the hands of the learned counsel. If the OM dated 3.3.2008 was in the nature of an amendment, there may well have been merit in the submission. The OM dated 3.3.2008 is in the nature of a “clarification”. Essentially, a clarification does not introduce anything new, to the already existing position. A clarification, only explains the true purport of an existing instrument. As such, a clarification always relates back to the date of the instrument which is sought to be clarified. In so far as the instant aspect of the matter is concerned, reference may be made to the decision rendered by this Court in S.S. Garewal vs. State of Punjab, (1993) 3 Suppl. 234, wherein this Court had observed as under:

“8 . In the alternative, it was urged that the order dated April 8, 1980 could only have prospective operation with effect from the date of issue of the said order and the sub-roster indicated by the said order could be given effect to only from that date and on that basis the first post reserved for Scheduled Castes should go to Balmikis or Mazhabi Sikhs and on that basis also respondent No. 3 was entitled to be placed against point No. 7 in the 100-point roster and Shri G.S. Samra against point No. 9 in the said roster.

9. From a perusal of the letter dated April 8, 1980, we find that it gives clarifications on certain doubts that had been created by some Departments in the matter of implementation of the instructions contained in the earlier letter dated May 5, 1975. Since the said letter dated April 8, 1980 is only clarificatory in nature, there is no question of its having an operation independent of the instructions contained in the letter dated May 5, 1975 and the clarifications contained in the letter dated April 8, 1980 have to be read as a part of the instructions contained in the earlier letter dated May 5, 1975. In this context it may be stated that according to the principles of statutory construction a statute which is

explanatory or clarificatory of the earlier enactment is usually held to be retrospective. (See: Craies on Statute Law, 7th Ed., p.58). It must, therefore, be held that all appointments against vacancies reserved for Scheduled Castes made after May 5, 1975 (after May 14, 1977 in so far as the Service is concerned), have to be made in accordance with the instructions as contained in the letter dated May 5, 1975 as clarified by letter dated April 8, 1980. On that view, the appointment of Shri Balwant Rai in 1979 has to be treated to be an appointment made under the said instructions and operation of these instructions cannot be postponed till April 8, 1980.....”

26.1 In view of the above, it is not possible for us to accept that the OM dated 3.3.2008, would only apply prospectively. We are also satisfied, that the OM dated 3.3.2008 which is only a “clarification” of the earlier OM dated 3.7.1986, would relate back to the original instrument, namely, the OM dated 3.7.1986.”

10. In the aforesaid premise, there is no manner of doubt that order dated 29.08.2018 has to be modified to the extent that the appointment of the petitioner as Professor is to be treated on regular basis with effect from the date of his original appointment letter i.e. 20.10.2014. To that extent, impugned order dated 20.10.2014 (Annexure P-7) is quashed and is modified directing that the regular appointment of the petitioner shall be treated with effect from 20.10.2014 and other terms and conditions mentioned in the offer of appointment shall remain the same. Needless to say that the petitioner shall also be entitled to all the consequential benefits including for being considered for appointment as Head of Department and appropriate orders qua the same shall be passed in accordance with law.

11. Disposed of in above terms.

01.11.2019
smriti

(ARUN MONGA)
JUDGE

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