

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 27485 of 2016
Date of decision : 27.05.2019

Shalom Akhai

.... Petitioner

versus

Director, PEC University of Technology and ors.

.... Respondents

CWP No. 414 of 2017

Kanika Saini

.... Petitioner

versus

Director, PEC University of Technology and ors.

.... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. D.S. Chahal, Advocate
for the petitioners(s) in
CWP No. 27485 of 2016.

Mr. S.P. Arora, Advocate and
Mr. Himanshu Arora, Advocate
for the petitioner(s) in
CWP No. 414 of 2017.

Mr. Ashwani Talwar, Advocate and
Mr. Akshay Bansal, Advocate
for respondent No. 1.

Mr. Tribhuwan Singla, Advocate
for respondent No. 3.

ARUN MONGA, J.

1. By this order, I intend to dispose of above mentioned two writ petitions, as similar issues are involved therein. For brevity, the facts are

being taken from CWP No. 27485 of 2016.

2. Petitioner seeks issuance of a writ, prohibiting the respondents from making fresh appointments on contractual basis by replacing one set of ad-hoc employees with another set of ad-hoc employees stated to be in violation of judgment rendered by Hon'ble the Supreme Court of India in Hargurpartap Singh vs. State of Punjab and another in SLP (Civil) No. 8745 of 2003 as followed by this Court in Baljit Singh and others vs. State of Punjab in CWP No. 7637 of 2016.

3. The factual matrix of the case briefly is that the petitioner was hired as Lecturer on contract basis in the year 2010 for an initial period of six months in the Mechanical Engineering Department of the respondent-University. Thereafter, his term was extended from time to time for a period of six months each time with notional break of one day in between. In the year 2014 he was transferred from the Mechanical Engineering Department to the Metallurgy Engineering Department. The last of the extensions was given to the petitioner for the period from 04.07.2016 to 23.12.2016.

4. During this period respondent No.1 issued an advertisement dated 22.12.2016 (Annexure P-6) inviting candidates for walk-in interviews for the same very post of Lecturer on contract basis. The petitioner was verbally informed by the Deputy Director of the University that he was not being given further extension. He was told to apply afresh by participating in the interview process. Feeling aggrieved, the petitioner filed the present writ petition.

5. In its return, respondent-University stated that the petitioner had been appointed on contract basis. In his joining letter dated 12.08.2010

(Annexure P-1), it has been clearly mentioned that his appointment can be terminated without any notice in case of misconduct. It is contended that the petitioner vide letter dated 24.07.2014 (Annexure R-1/2), was informed that he was being granted extension subject to the condition that he will improve his performance in the coming semesters. However, the petitioner failed to improve and was continuously graded 'below average' in the student feedback.

6. In the circumstances, respondent-University did not grant extension beyond 23.12.2016 to the petitioner, owing to his poor performance. He was informed that he would have to participate as a fresh candidate as per advertisement dated 22.12.2016 (Annexure P-6). It is contended that the petitioner was not found suitable in the selection process and persons namely Mr. Manoj Kumar and Mr. Sumit Taneja, who were found more suitable had been appointed.

7. It is submitted that vide advertisement 03.06.2015 (Annexure R-1/3), regular appointments to the post of Assistant Professor had been advertised but the selection process had been put on hold by an interim order dated 21.01.2016 (Annexure R-1/4), passed by this Court in CWP No. 1208 of 2016. Lastly, it was submitted that the conduct/performance of an employee is the guiding principle for grant of extension to contractual employees. The law laid down in Hargurpartap Singh vs. State of Punjab and another bearing SLP (Civil) No. 8745 of 2003 and in Baljit Singh and others vs. State of Punjab bearing CWP No. 7637 of 2016 is subject to the performance of the contractual employees.

8. In the replication filed by the petitioner, it has been contended

that the extensions granted to him, pursuant to the letter dated 24.07.2014 (Annexure R-1/2), were without any riders which indicates that the performance of the petitioner had improved. It is further stated that nothing has been placed on record by the respondent-University to show that the performance of the petitioner was subpar and that his poor performance was ever considered while refusing to grant him extension.

9. The petitioner averred that he had challenged advertisement dated 22.12.2016 vide which the fresh selection process was initiated by way of writ and had only participated in the same after his claim had been rejected. It is further averred that the petitioner had been placed in the waiting list by the selection committee and the respondent No. 1-University had made false assertion that he had not been found suitable. Out of the persons selected i.e. Mr. Manoj Kumar and Mr. Sumit Taneja, the former had already resigned and despite that selection was not made from the waiting list. The petitioner has been overlooked for selection being the only candidate in the waiting list.

10. Learned counsel for the petitioner submitted that the case is squarely covered by the law laid down in Hargurpartap Singh vs. State of Punjab and another bearing SLP (Civil) No. 8745 of 2003 and in Baljit Singh and others vs. State of Punjab bearing CWP No. 7637 of 2016. In these cases it has been held that one set of contractual employees cannot be replaced by another set of contractual employees. A person appointed on contractual appointment and having rendered service for a considerable amount of time would gain experience and will be more beneficial to the organization than a fresh contractual employee. Contractual employees may

be replaced by persons recruited on regular basis and not with other contractual employees.

11. It is further submitted that the respondent No. 1-University has failed to produce anything on record to show that the extension of term of service of the petitioner was denied on the basis of having poor performance. It is stated that the stand that petitioner had poor performance has been taken up for the first time in the pleadings and that it was never conveyed to the petitioner that non-grant of extension was based on his having failed to improve his performance or based on below average performance reviews.

12. Per contra, the learned counsel for respondent No.1-University concedes that the law laid down in the judgments, *ibid*, is well settled. However, where a contractual employee fails to perform his duties to certain standards he cannot, as a matter of right, claim the benefit of the judgments. The respondent No.1-University being a premier educational and research institution cannot be forced to keep in employment a person who has consistently been given a subpar performance review by the students. Even after the petitioner had been informed on 24.07.2014 (Annexure R-1/2) that his extension was subject to improvement in performance, he failed to improve his performance.

13. Learned counsel for the respondent No. 1-University has placed reliance on judgment rendered by a coordinate Bench of this Court in case titled as 'Neha Bhullar vs. PEC University of Technology' bearing CWP No. 14 of 2017, wherein it has been held that in case performance of the contractual faculty appointee is not upto the the mark and he has got adverse/poor student feedback, he would have no vested right to continue

once contractual period comes to an end.

14. It is further averred that affidavit of Mr. Sushant Samir, Registrar, PEC University of Technology submitted on 09.01.2019, along with Annexure R-1/5, have been placed on record to show that the performance of the petitioner had been poor for the academic year 2015-2016 and 2016-2017, due to which it was decided not to continue with the services of the petitioner. Even otherwise, the relief sought by the petitioner has now been rendered infructuous as he has been out of job since 2016.

15. I have heard the learned counsel for both the parties and have also gone through their respective pleadings.

16. At the outset, I am in agreement with the learned counsel for the petitioner that it is the settled position of law that one set of contractual employees cannot be replaced by another set of contractual employees. In this regard, reliance placed by the learned counsel for the petitioner on Hargurpartap Singh vs. State of Punjab and another bearing SLP (Civil) No. 8745 of 2003 and in Baljit Singh and others vs. State of Punjab bearing CWP No. 7637 of 2016, is correct. The relevant portion of judgment rendered in 'Hargurpartap Singh vs. State of Punjab and another' reported as 2007(13) SCC 292 is reproduced herein below:-

“3. We have carefully looked into the judgment of the High Court and other pleadings that have been put forth before this Court. It is clear that though the appellants may not be entitled to regular appointment as such it cannot be said that they will not be entitled to the minimum of the pay scale nor that they should not be continued till regular incumbents are appointed. The course adopted by the High Court is to displace one ad

hoc arrangement by another ad hoc arrangement which is not at all appropriate for these persons who have gained experience which will be more beneficial and useful to the colleges concerned rather than to appoint persons afresh on ad hoc basis. Therefore, we set aside the orders made by the High Court to the extent the same deny the claim of the appellants of minimum pay scale and continuation in service till regular incumbents are appointed. We direct that they shall be continued in service till regular appointments are made on minimum of the pay scale.”

17. The stand taken by the learned counsel for the petitioner is that the respondent-University has failed to produce anything on record to show that the rejection of extension to the petitioner was on the ground that his performance had been below average. This, as per record, is also correct. Even though it is stated that the student feedback against the petitioner had been poor for the academic session 2015-2016 and 2016-2017, nothing has been placed on record before this Court to show that while rejecting the benefit of extension to the petitioner, it was conveyed to him that it was due to this reason. The contention that the petitioner was not performing upto the mark and hence, he was denied extension, is untenable.

18. On the other hand, stand taken by the petitioner that even otherwise he had participated in the fresh selection process and had been short-listed in the waiting list of the successful candidates has not been contested by the respondents. Concededly, one of the selected candidates, Sh. Manoj Kumar had already resigned from the post. The respondents ought to have filled the said post from the waiting list. This has not been

done till date. The other selected candidate has been joined as a party in the present petition.

19. The petitioner had earlier approached this Court vide CWP No. 16003 of 2017 challenging the appointments made under the advertisement dated 22.12.2016 (Annexure P-6) but the same was dismissed. He filed an intra-court appeal vide LPA No. 1634 of 2017, decided on 12.02.2018, wherein it has been held as under :-

“ As far as second issue is concerned, as there was no prayer in the writ petition regarding that and there is another writ petition earlier filed by the appellant which is still pending, raising the issue regarding replacement of contractual faculty with another contractual faculty, we dispose of the present appeal with the observation that the aforesaid writ petition shall be decided on its own merits without being prejudiced with any observations made in the impugned order.”

Thus, the petitioner has been litigating his cause bona fide and the contention raised by the respondents that the relief sought by the petitioner has been rendered infructuous does not stand judicial scrutiny and is not tenable.

20. In view of the discussion above and the reasoning contained therein, I find that the action of the respondent, in issuing the advertisement to fill the contractual post held by the petitioner to be filled by other contractual employees is against the law as laid down by Hon'ble the Supreme Court. The same is set aside. The petition is partly allowed and the respondent-University is directed to consider the petitioner for appointment on the contractual post in place of the candidate who was appointed in the

new selection process but has since resigned, as per the waiting list.

21. Both the writ petitions are allowed in the above said terms.

(ARUN MONGA)
JUDGE

May 27, 2019
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| 1. | Whether speaking/ reasoned: | Yes/ No |
| 2. | Whether reportable: | Yes/ No |