

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

**C.W.P. No. 16610 of 2018 (O&M)
Pronounced On : 05.03.2019**

Dr. Jyoti Rani

..... Petitioner

Versus

Board of Governors, Thapar Institute of Engineering
& Technology, Patiala, through its Chairman and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. D.S. Patwalia, Senior Advocate, assisted by
Mr. Gaurav Rana, Advocate
for the petitioner.

Mr. Rajiv Atma Ram, Senior Advocate, assisted by
Mr. Rajat Khanna, Advocate
for respondent Nos. 1 to 6.

Mr. Salil Sabhlok, Advocate
for respondent No. 7-UGC.

JASWANT SINGH, J.

1. Petitioner (**Dr. Jyoti Rani**) by way of the present Civil Writ Petition has challenged the order dated 07.06.2018 (**Annexure P-6**) wherein the petitioner has been discharged from service of Assistant Professor (Food Science & Technology) in the Department of Bio-Technology in the Respondent-University Thapar Institute of Engineering and Technology, Patiala.

2. Succinctly, the facts of the case are that the respondent-University advertised the post of Assistant Professor (Food Science & Technology) in Department of Bio-Technology in April 2015 and the said advertised post was to be filled through three (03) tier selection process. The petitioner was selected for the said post and was issued appointment letter

dated 11.07.2015 (**Annexure P-1**). The terms & conditions of the appointment letter were accepted by the petitioner and in token of said acceptance, an endorsement dated 15.07.2015 was made by the petitioner on the appointment letter itself. In the appointment letter, in the terms & conditions of appointment, it was mentioned as under:-

*“.....2. You shall be on probation for a period of two years initially. **The period of probation may be further extended on the sole discretion of University. Your confirmation shall be subject to your conduct and work being satisfactory during this period.***

*3. During the **initial or extended period of probation**, your services may be terminated on either side on month's notice or month's salary in lieu thereof, without assigning any reason.....”*

Under the head, “**Other Terms & Conditions of Service**” it was mentioned that:

“In the matter of other terms & conditions of services, you will be governed by the Service Regulation of the University, as may be in force and amended from time to time. A set of the Service Regulation is available in the Registry of the University.”

All the terms and conditions including the aforestated terms and conditions were accepted by the petitioner prior to her joining the service.

3. The petitioner joined the respondent-University on 27.07.2015 and remained on the probation. Her period of probation of two years was extended for a period of one year vide letter dated 12.01.2018 (**Annexure P-2**) though wrongly typed as 12.01.2017. During the said extended period of probation, by the impugned order dated 07.06.2018 (**P-6**), the petitioner was ordered to be discharged from service.

The petitioner in impugning the order dated 07.06.2018 (P-1) is alleging *mala fides* against respondent No. 3, 5 & 6 and has mentioned that under UGC/MHRD/Government of India instructions the maximum period of probation is specified as two years as initial probation period for employees appointed against permanent posts. The petitioner has also refuted the 'Advisory Note' given to the petitioner on 28.09.2017 (Annexure P-7) which is addressed to the petitioner by the Head, Department of Bio-Technology.

4. Respondents No. 1, 2 & 4 have filed their written statement wherein in the Preliminary Submissions, it is mentioned that after the joining of the petitioner in July 2015, the petitioner's performance deteriorated from 'Good' to 'Satisfactory' to 'Poor'. The petitioner for her Quarterly Appraisal Report from July 2015 to December 2016 (Six Quarterly Appraisal Reports) served under Dr. Dinesh Goyal as Head of the Department of the Bio-Technology Department of the Respondent-University and thereafter from January 2017 to March 2018 (Five Quarterly Appraisal Reports) under respondent No. 5 as the Head of the Department and having consistent unsatisfactory Performance Report. As per the respondent-University, the extension of probation by another period of one year was another opportunity granted to the petitioner to show improvement which was duly reflected in the extension letter dated 12.01.2018 (P-2).

The Respondent-University has also taken the preliminary objections that as per the advertisement, pursuant to which the petitioner was selected, one of the requirement was that the candidate must have atleast two SCI/SCIE/SSCI Journals Publications registered with M/s Thomson Reuters. The petitioner was not having any such papers in the

aforestated Journals and during the course of her service also, the petitioner has not published the minimum two SCI publications registered with M/s Thomson Reuters as required.

The Respondent-University has contended that a fresh advertisement dated 16.05.2018 was issued by the respondent-University for the post of Assistant Professor, Bio-Technology Department for which the last date for submission of application was 11.07.2018. The petitioner applied for the said post in this fresh advertisement vide her application dated 11.06.2018 (**R-1/6**). The petitioner was not short listed as she did not have the requisite SCI Publications. The factum of the fresh advertisement wherein the petitioner applied and was not shortlisted has been concealed by the petitioner in the writ petition. The respondent-University have taken a consistent stand that it was only due to deteriorating work performance based on quarterly Appraisal Report lead to the discharge of the petitioner from service.

5. Respondent-University filed an application for vacation of the interim order dated 10.07.2018 granted by this Hon'ble Court against which the petitioner filed a reply wherein reliance was placed on Clause 11 of UGC Regulations of Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2010 notified on 28.06.2010 as per which the petitioner claimed that the probation period of one year is extendable by a maximum period of one year and the confirmation at the end of the one year is automatic. The petitioner claimed that since the respondent-University is taking Grant in Aid from the University Grants Commission therefore the UGC Regulations would be applicable on the

Respondent University. The parties have further placed on record various documents in support of their rival submissions. During the course of proceedings, counsel for respondent No. 7/University Grants Commission has confirmed that the Respondent-University/Thapar Institute of Engineering and Technology is not taking any grant-in-aid from the UGC.

6. Based on the pleadings of the petitioner, the impugned Discharge Order dated 07.06.2018 (**P-6**), is prayed to be set aside on the ground that as per “UGC Regulations of Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2010” (**P-28**) {hereinafter referred to as “UGC Regulations 2010”}, the period of probation is prescribed in Regulation 11 ‘Period of Probation and Confirmation’ as under:-

“11.0 PERIOD OF PROBATION AND CONFIRMATION

11.1. *The minimum period of probation shall be one year extendable by a maximum period of one more year in case of unsatisfactory performance.*

11.2. *The confirmation at the end of one year shall be automatic, unless extended for another year by a specific order, before expiry of the first year.*

11.3. *Subject to this Clause 11, it is obligatory on the part of the university/the concerned institution to issue an order of confirmation to the incumbents within 45 days of completion of probationary period after due process of verification of satisfactory performance.*

11.4. *Probation and confirmation rules are applicable only at initial stage of recruitment, issued from time to time, by Central Government.*

11.5. *All other Central Government rules on probation and confirmation shall be applicable mutatis mutandis.”*

Contrary to the aforesaid provisions of Clause 11 of the 2010 Regulations, the Respondent University has relied upon the terms and conditions of the Appointment Letter (P-1) and the acceptance of the same by the Petitioner and on “**Regulation B-27**” of “General and Service Regulations” providing for as under:-

“PROBATION AND SUPERANNUATION B-27

(i) All appointments to permanent posts in the University shall be made on probation for period of two years. Provided that if a confirmed employee of the University is appointed against a permanent post, the period of probation shall be one year.

(a) The head of Department/School/Centre/section shall be asked to send a report about the work and conduct of the employee with a definite recommendation for confirmation atleast two months before the expiry of the date of probationary period or otherwise.

(b) The appointing authority shall have the power to confirm an employee on the recommendation of the Head of concerned Departments / School / Centre / Section / Unit.

(ii) The appointing authority shall have power to extend the period of probation of an employee for such time and on such terms and conditions as he may find necessary.

(iii) On completion of the period of probation or the extended period of probation, as the case may be, the employee shall, if his work and conduct has been satisfactory, be confirmed in the post and he shall, if his work continues to be satisfactory and he abides by the Service Regulations of the University, continues to hold his office till he attains the age of 60 years.”

The respondent-University claims and has taken the stand that the employment of the petitioner is governed by the University Regulations

and since the Respondent University is not taking or receiving any grant in

aid then the UGC Regulations are not applicable on the Respondent University except for maintaining the minimum norms of qualifications.

It is the case of the petitioner that the offer of appointment (**P-1**) and the Regulation B-27 of the Respondent-University Regulations cannot apply and prevail over the “UGC Regulations of Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2010” (**P-28**).

7. The issue in controversy hinges on the question - Whether the “UGC Regulations 2010” are applicable on the petitioner prevailing over and above the “General and Service Regulations” of the Respondent University which is unaided – self financed deemed University getting no grant in aids from the UGC?

8. The petitioner has relied on the “UGC Regulations 2010” (**P-28**) and has argued that these Regulations are mandatory for compliance by the Respondent-University and the Probation Clause in the offer of appointment (**P-1**) and Regulation B-27 of the University Regulations cannot be in derogation of the U.G.C. Probation Regulations 11.1 to 11.5.

9. The Respondent-University has countered the above argument that the “UGC Regulations 2010” (**P-28**) are framed in terms of Section 26 (1) (e) and (g), which reads as under:-

“In exercise of the powers conferred under clause (e) and (g) of sub-Section (1) of Section 26 of University Grants Commission Act, 1956 (3 of 1956), and in pursuance of the MHRD O.M. No. F.23-7/2008-IFD dated 23rd October, 2008, read with Ministry of Finance (Department of Expenditure) O.M. No. F.1-1/2008-IC dated 30th August, 2008, and in terms of the MHRD Notification No. 1-32/2006-U.II/U.I(1)

issued on 31st December, 2008 and in supersession of the University Grants Commission (Minimum Qualifications required for the Appointment and Career Advancement of Teachers in Universities and Institutions affiliated to it) Regulations, 2000, issued by University Grants Commission vide Regulation No. F.3-1/2000 (PS) dated 4th April, 2000, together with all amendments made therein from time to time, the University Grants Commission hereby frames the following Regulations,

The provisions of Section 26 of the UGC Act 1956 are reproduced as under :

“26. (1) The Commission may, by notification in the Official Gazette, make regulations consistent with this Act and the rules made thereunder—

- (a) regulating the meetings of the Commission and the procedure for conducting business there at;*
- (b) regulating the manner in which and the purposes for which persons may be associated with the Commission under section 9;*
- (c) specifying the terms and conditions of service of the employees appointed by the Commission;*
- (d) specifying the institutions or class of institutions which may be recognised by the Commission under clause (f) of sub-section 2;*
- (e) defining the qualifications that should ordinarily be required of any person to be appointed to the teaching staff of the University, having regard to the branch of education in which he is expected to give instruction;***
- (f) defining the minimum standards of instruction for the grant of any degree by any University;***
- (g) regulating the maintenance of standards and the co-ordination of work or facilities in Universities.***
- (h) regulating the establishment of institutions referred to in clause (ccc) of section 12 and other matters relating to such institutions;*

(i) specifying the matters in respect of which fees may be charged, and scales of fees in accordance with which fees may be charged, by a college under sub-section (2) of section 12A;

(j) specifying the manner in which an inquiry may be conducted under sub-section (4) of section 12A;

(2) No regulation shall be made under clause (a) or clause (b) or clause (c) or clause (d) 2 [or clause (h) or clause (j) or clause (j)] of sub-section (1) except with the previous approval of the Central Government.

(3) The power to make regulations conferred by this section except clause (i) and clause (j) of subsection (1) shall include the power to give retrospective effect from a date not earlier than the date of commencement of this Act, to the regulations or any of them but no retrospective effect shall be given to any regulation so as to prejudicially affect the interests of any person to whom such regulation may be applicable.”

From the aforestated provisions, it shows that under Section 26 (1) (e) to (g), the UGC can make the regulations for defining the qualifications of the teaching staff, the minimum standards of instruction for the grant of any degree by any University and for regulating the maintenance of standards and the co-ordination of work or facilities in universities. In the aforestated Section 26, there is no power granted by the U.G.C. Act, 1956 which may enable respondent No. 7 i.e. U.G.C. to frame Regulations governing the conditions of service of the employees of Universities (including Deemed to be Universities) and Colleges, recognized by it. Section 26(1) (e) and (g) of the UGC Act, 1956 do not permit U.G.C. to frame Regulations prescribing Service conditions of university/College employees.

10. Furthermore, even to the extent of the prescribed norms and Regulations, the UGC Act, 1956 itself contains provisions for dealing with

non-compliance of its Regulations by the Universities (including Deemed to be Universities) and the Colleges. The UGC Act, 1956 contemplates stoppage of grant in aid in case of violation of its Regulations. Section 14 of the U.G.C. Ac, 1956 reads as under:-

“14. Consequences of failure of Universities to comply with recommendations of the Commission.- If any University grants affiliation in respect of any course of study to any college referred to in sub section (5) of section 12-A in contravention of the provisions of that sub-section or fails within a reasonable time to comply with any recommendation made by the Commission under section 12 or section 13 [or contravenes the provisions of any rule made under clause (f) or clause (g) of sub section (2) of section 25, or of any regulation made under clause (e) or clause (f) or clause (g) of section 26 the commission after taking into consideration the cause, if any shown by the University or such failure or contravention may withhold from the university the grants proposed to be made out of the Fund of the Commission.”

Further under Regulation 3 of “UGC Regulations 2010” (also provides for stoppage of grant in aid in case of non-compliance of the said Regulations. Regulation 3 reads as under:-

“3. Consequences of failure of the Universities to comply with the recommendations of the Commission, as provision of Section 14 of the University Grants Commission Act, 1956:

If any University grants affiliation in respect of any course of study to any college referred to in sub section (5) of Section 12-A in contravention of the provisions of the sub-section, or fails within a reasonable time to comply with any recommendations made by the Commission under Section 12 or Section 13, or contravenes the provisions of any rule made under clause (f) of sub-section (2) of Section 25 or of any regulations made under clause (e) or clause (f) or clause (g) of Sub-Section (1) of Section 26, the Commission after taking into consideration the cause, if any, shown by the University

for such failure or contravention, may withhold from the university the grants proposed to be made out of the fund of the Commission.”

From the aforestated Statutory provisions it is clear that the contravention of rules / provisions made under Section 26 (1) Clause (e) to (g) entails the withholding of the grants to the University to be made from the funds of the UGC. There is no liability beyond the withholding of the grants by the UGC.

11. The Respondent-University is undisputedly an unaided/self-financed ‘Deemed to be University’ and is not receiving any ‘Grant in Aid Funds’ either from UGC, Government of India or Government of Punjab. Respondent No. 7/UGC through counsel has made a statement that no aid is given by respondent No. 7/UGC to the respondent-University.

It is held by the Hon’ble Supreme Court in case titled “**Kalyani Mathivanan v. K.V. Jeyaraj**” reported as **2015(2) S.C.T. 676** and decided on 11.03.2015 that the “UGC Regulations of minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2010” do not apply to unaided/self-financed Deemed to be University whose maintenance expenditure is not met by respondent No. 7 i.e. UGC.

In Para 44 of the aforestated judgment, it has been held as under :

“.....(iii) UGC Regulations, 2010 are mandatory to teachers and other academic staff in all the Central Universities and Colleges thereunder and the Institutions deemed to be Universities whose maintenance expenditure is met by the UGC.

(iv) UGC Regulations, 2010 is directory for the

Universities, Colleges and other higher educational institutions under the purview of the State Legislation as the matter has been left to the State Government to adopt and implement the Scheme.

Thus, UGC Regulations, 2010 is partly mandatory and is partly directory.....”

The Respondent-University is concededly an unaided/self-financed Deemed to be University, whose maintenance expenditure is not met by respondent No. 7/UGC. Respondent No. 7-UGC has no power to frame Regulations regarding the conditions of service of employees of such universities and the “UGC Regulations 2010” would not be mandatory to the respondent-University.

12. The argument of the respondent-University that conditions higher than those prescribed by Regulations can always be imposed by an employer has force. The “UGC Regulations of 2010” prescribes the minimum standards only, if the minimum standards are not achieved and complied with then the UGC is empowered to withhold the grants in aid to such University. In the present case, the employer while complying with the minimum norms and standards has chosen to have as a term and condition of employment / Probation that there will be an initial period of probation for two (02) years, which period can be extended. Thus the provisions is more stringent than the “UGC Regulations 2010” and higher qualification / conditions have been imposed which is permissible in law.

In this regard while dealing with a similar situation in the case of doctors, the Hon’ble Supreme Court in **Dr. Ambesh Kumar versus Principal, LLRM Medical College, Meerut and Others** reported as **1987 AIR (SC) 400**, held as under :

*various post-graduate courses both degree and diploma in Medical Colleges is limited and a large number of candidates undoubtedly apply for admission to these courses of study. In such circumstances the impugned order laying down the qualification for a candidate to be eligible for being considered for selection for admission to the said courses on the basis of the merit as specified by Regulations made under the Indian Medical Council Act **cannot be said to be in conflict with the said Regulations or in any way repugnant to the said Regulations. It does not in any way encroach upon the standards prescribed by the said Regulations. On the other hand by laying down a further qualification of eligibility it promotes and furthers the standard in an institution.***

X x x x

*25. On a consideration of the aforesaid decisions we are unable to hold that the impugned order dated 15-12-1982 has in any way contravened or encroached upon the power of the Central Legislature to make laws or the Central Government to make orders in regard to matters provided in entry 66 of List I of Seventh Schedule to the Constitution. There is no conflict between the Regulations and also the order in question. **The State Government by laying down the eligibility qualification namely the obtaining of certain minimum marks in the MBBS examination by the candidates has not in any way encroached upon the Regulations made under the Indian Medical Council Act nor does it infringe the central power provided in the entry 66 of List I of the Seventh Schedule to the Constitution. The order merely provides an additional eligibility qualification.** We are in full agreement with the reasoning and conclusion of the High Court in this respect.....*

X x x x”

In the instant case also, the UGC by the 2010 Regulations prescribes the minimum eligibility conditions and qualifications and any additional qualification or condition imposed by the University (the

Respondent-University here) cannot be said to have encroached upon and infringed the provisions of UGC Regulations 2010. Furthermore, as held above that for the unaided and self financed University, the UGC Regulations 2010 are not mandatory but are directory in nature.

The General and Service Regulations of the Respondent-University so long as these are not inconsistent with the UGC Regulations of 2010 even though prescribe the additional standards to be achieved are hereby held to be applicable to the petitioner as the terms and conditions applicable on the employees of the Respondent University.

13. The petitioner (Dr. Jyoti Rani) claims that she is deemed to be confirmed in terms of Regulations 11.1 to 11.5 of the “UGC Regulations 2010” which provide the initial period of probation of one year and deemed to be confirmed if no order of extension of service is passed. The petitioner further claims that it is obligatory on the part of the University to issue an order of confirmation to the incumbent within 45 days of completion of probationary period after due process of verification of satisfactory performance.

On this aspect, the general principles as settled by the Hon’ble Supreme Courts hold otherwise and contrary to the claim of the petitioner. It is held in numerous judgments that expiry period of probation does not mean that probationer stands confirmed or that he has successfully completed the period of probation. In **Kartar Singh, Lecturer vs. Director, Public Instruction, Punjab, Chandigarh and others** reported as 1980 (2) SLR 843, it is held by the Hon’ble Supreme Court as under:-

6.In this context the learned Single Judge seems to be right in his conclusion that the Petitioner by his conduct acquiesced and accepted the extension of the period of his

probation and therefore, it would now hardly lie in his mouth to assail the termination merely because the assessment of the totality of his work over the extended period of probation did not measure unto the standards required by the employer. The Appellant cannot possibly be allowed to sit on the fence and first willingly take to benefit of the extended period of probation and when he failed therein to turn-round and assail the said extension. I would, therefore, affirm the learned Single Judge's finding that in view of the acceptance and acquiescence of the Appellant with regard to the extension of the period of probation, he cannot be permitted to challenge the same.

Further in **High Court of M.P. v. Satya Narayan Thavar,** 2001 (7) SCC 161, the Hon'ble Supreme Court has held as under :-

11. The question of deemed confirmation in service Jurisprudence, which is dependent upon language of the relevant services rules, has been subject matter of consideration before this Court times without number in various decisions and there are three lines of cases on this point. One line of cases is where in the service rules or the letter of appointment a period of probation is specified and power to extend the same is also conferred upon the authority without prescribing any maximum period of probation and if the officer is continued beyond the prescribed or extended period, he cannot be deemed to be confirmed. In such cases there is no bar against termination at any point of time after expiry of the period of probation. Other line of cases is that where while there is a provision in the rules for initial probation and extension thereof, a maximum period for such extension is also provided beyond which it is not permissible to extend probation. The inference in such cases is that officer concerned is deemed to have been confirmed upon expiry of the maximum period of probation in case before its expiry order of termination has not been passed. The last line of cases is where though under the rules maximum period of probation is prescribed, but the same require a specific act on

the part of the employer by issuing an order of confirmation and of passing a test for the purposes of confirmation. In such cases, even if the maximum period of probation has expired and neither any order of confirmation has been passed nor the person concerned has passed the requisite test, he cannot be deemed to have been confirmed merely because the said period has expired.

In the case of the petitioner, the petitioner was made fully aware of the applicability of the Probation terms and conditions as per the 'General and Service Regulations' of the Respondent-University and made part of her Appointment Letter. The petitioner expressed her consent for acceptance of the terms and conditions and thereupon joined her service. The petitioner cannot deny the acceptance of the terms and conditions and as held above, the "General and Service Regulations" of the Respondent-Department are applicable on the petitioner.

14. The contention of the petitioner that no specific order regarding compliance of probation is required to be passed and that the petitioner is deemed to be confirmed in service is also belied from the offer of appointment **(P-1)** wherein by specific condition, the probation of the petitioner was kept open ended and no maximum period of probation is contained therein. It was also mentioned in the terms and conditions that the confirmation of the petitioner will be subject to her conduct and work being satisfactory during the period of probation. It was also mentioned that the initial period of probation will be two (02) years which can be further extended. The work and conduct of the petitioner was evaluated to be not satisfactory for the entire period of probation including the extended period of probation. There is no clause of "deemed confirmation" in the offer of appointment. Further **Regulation B-27** of the University Regulations does

not contain any maximum period of probation. From the terms and conditions of the Appointment letter, duly accepted by the petitioner and the provisions of Probation in Regulation B-27 of the General and Service Regulations of the Respondent University are applicable to the petitioner.

It is thus apparent that period of probation can be extended for such time as the appointing authority may deem fit and on such terms and conditions which the appointing authority deems fit. Further Regulation B-27 (iii) requires a positive order of confirmation to be passed towards the successful completion of the Probation period. In this context, reference is made to the judgment in case of “**High Court of M.P. v. Satya Narayan Thavar, 2001 (7) SCC 161** wherein the Hon’ble Supreme Court has further held that:-

15. The scheme of the rules is clear : confirmation in the post which a probationer is holding does not result merely from the expiry of the period of probation, and so long as the order of confirmation is not made, the holder of the post remains a probationer. It has been held by this Court that when a first appointment or promotion is made on probation for a specified period and the employee is allowed to continue in the post, after the expiry of the said period without any specific order of confirmation he continues as a probationer only and acquires no substantive right to hold the post. If the order of appointment itself states that at the end of the period of probation the appointee will stand confirmed in the absence of any order to the contrary, the appointee will acquire a substantive right to the post even without an order of confirmation. In all other cases, in the absence of such an order or in the absence of such a service rule an express order of confirmation is necessary to give him such a right. Where after the period of probation an appointee is allowed to continue in the post without an order of confirmation, the only possible view to take is that by implication the period of

probation has been extended, and it is not a correct proposition to state that an appointee should be deemed to be confirmed from the mere fact that he is allowed to continue after the end of the period of probation."

In the given facts and circumstances, the Respondent-University is required to pass an order of confirmation if the work and conduct of the probationer has been satisfactory in terms of the letter of Appointment as also based on the provisions of Regulation B-27 of the General and Service Regulations of the Respondent University. Thus the contentions of the petitioner regarding her deemed confirmation is rejected being without merit.

15. The petitioner has alleged *mala fides* against respondent Nos. 3, 5 and 6 and contended that her work and conduct was satisfactory. The petitioner during her tenure with the respondent-University for her Quarterly Appraisal Report from July 2015 to December 2016 (Six Quarterly Appraisal Reports) served under Dr. Dinesh Goyal as Head of the Department of the Bio-Technology Department of the Respondent-University and thereafter from January 2017 to March 2018 (Five Quarterly Appraisal Reports) under respondent No. 5 as the Head of the Department and having consistent unsatisfactory Performance Report. As per the respondent-University, the extension of probation by another period of one year was another opportunity granted to the petitioner to show improvement which was duly reflected in the extension letter dated 12.01.2018 (P-2). The respondent-University in this regard has rightly contended that the satisfaction of the conduct and work of the Probationer is to be arrived at by the employer and in this regard reliance is placed on the Full Bench judgment of this Hon'ble Court in **Guru Nanak Dev University vs. Dr.**

(Mrs.) Iqbal Kaur Sandhu and others [1976 AIR (Punjab) 69], wherein the Hon'ble Full Bench has held as under:-

(40) Before parting with this aspect of the case, we must also notice what appears to us a rather unusual view expressed by the learned Single Judge that the appointing authority did not have any material before it for arriving at an adverse assessment of the petitioner-respondent's work or in the alternative the factual details as to how the work and conduct of the respondent were not satisfactory, were not marshalled and brought on the record. In the earlier part of the judgment, we have accepted the authenticity of Annexure R2/2. From this it would be evident that the opinion of as many as 6 or 7 members of the Executive Board of the Women's Sport Committee, which had directly to deal with and assess the work of the petitioner-respondent had been duly ascertained. All of them were unanimous about the fact that the work and conduct of the petitioner-respondent were not satisfactory. This was recorded in the form of a report by Mrs. J. K. Grewal and forwarded to the Vice-Chancellor. The latter in his own affidavit has clearly recorded that he agreed with that report. This apart, it has to be remembered that the Vice-Chancellor as the Controlling Officer was independently competent to opine about the work and conduct of the respondent and must be assumed to be well aware of the nature of the same. There was, hence, factually abundant material and the unequivocal opinion of as many as 7 or 8 superiors of the respondent regarding her work and conduct. Indeed, we are of the view that far from there being any lack of factual basis there was more than ample material before the appointing authority which after adequate discussion arrived at an unanimous opinion on the point.

(41) We have, however, found considerable difficulty in appreciating the view-point that because the relevant

reports, etc., did not furnish all the factual details and did not specify or opine as to how the work and conduct of the respondent were not satisfactory, therefore, these reports were either meaningless or could not be acted upon. If the learned Single Judge meant to opine that for arriving at a plain assessment of the work of a probationer, the competent authority is compelled by law to marshal each and every one of the facts and incidents from which his subjective satisfaction as to the work and conduct has been derived, then we must in no uncertain terms differ and reject that view. Neither any authority nor any principle has been cited before us nor we are aware of any such proposition which requires the employer to marshal all the facts regarding the alleged unsatisfactory nature of the work and conduct of a probationer and then to arrive at a concise finding qua each of them for holding that he is subjectively satisfied or otherwise about the work of his probationer-employee. Indeed, we take it as well-settled that the matter of the satisfaction of an employer about the work and conduct of his employee is entirely personal to the former and it is he alone who can opine about the same. It appears to us that it is not the province of the Courts to ordinarily go behind that view arrived at within the four corners of his right to do so. To our mind, it is entirely erroneous to consider the matter of the satisfaction of the employer about the work and conduct of his employee as if it were a lis betwixt them in which each side must marshal up his facts and arguments in extenso and then a speaking and rational order be recorded for holding whether the work was satisfactory or otherwise. Unless binding authority says to the contrary, we are on record to hold that satisfaction in these cases is the personal satisfaction of the employer. The learned Judge was, therefore, in error in requiring and wanting details of factual material and each instance of unsatisfactory work and conduct as a condition precedent for the employer to arrive at an

overall appraisal about the work and conduct of the probationer. We are firmly of the view that it is unnecessary and even dangerous to induct any such novel or nebulous concept in a matter so essentially simple as the satisfaction or otherwise of an employer qua the work of his employee.

The respondent-University and its officers were having the material of the unsatisfactory appraisal reports of the petitioner wherein she was assessed for consistent unsatisfactory performance. The probationer, on her part, will always consider her work and conduct to be satisfactory. However, it is not the satisfaction of the probationer which is to be seen but the employer to be satisfied with regard to the work and conduct of probationer as held by the Hon'ble Full Bench.

The petitioner contents to have filed representations upon the extension of the period of probation but at the same time there is no denial of the fact that the petitioner was consistently having deteriorating Quarterly Appraisal Reports under two different Head of the Departments in which out of 11 Quarterly Appraisal Reports, six were rendered by Dr. Dinesh Goyal who assessed the petitioner starting with Good to Satisfactory to Poor which remained consistent. The petitioner has not alleged any *mala fides* on the said Head of the Department. Furthermore, in the instant case of the Petitioner after the impugned Order dated 07.06.2018, the petitioner participated in fresh recruitment for the post of Assistant Professor in the Respondent-University where owing to non fulfilling the eligibility conditions, the petitioner was not shortlisted.

16. The petitioner in support of her claim has relied that her Student Survey Grades her to be *hundred per cent (100%)* and, therefore, her work and conduct could not be assessed as not satisfactory. The

contention of the petitioner is contrary to the record as the Student Survey Grades score of the petitioner has been as low as 20% (**P-18 refers**). Furthermore, the Quarterly Reports of the petitioner (**R-1/1 Colly**) given contrary picture than claimed by the petitioner. The respondent University in their submissions have referred to the different aspects/parameters on the basis of which teaching work has been assessed:-

“A. TEACHING/DEVELOPMENT WORK

1. *Language, expression including the efforts to improve it.*
2. *Efforts at improving knowledge thro reading various books related with the subjects.*
3. *Relationship with the students.*
4. *Response of the students.*
5. *Relationship with colleagues.*
6. *Contribution to institution/other departmental work/ sincerity towards the job.*
7. *Helping the students outside the class.*
8. *Promptness with which above work executed, if given.*
9. *Willingness to take up work other than teaching assignment (e.g.) making proposal, time table work, laboratory development, project semester, making various reports etc.*

B. QUALITY OF WORK

1. *RESERCH ACTIVITIES/Completion of own ME/Ph.D Theis*
2. *Guiding Me/Ph.D Thesis*
3. *Publishing Research Papers*
4. *Guiding research on oriented Projects*
5. **OTHER ACTIVITIES** *like taking up sponsored project, Consultancy work, conducting seminars, giving lectures etc.*

C. OTHER ATTRIBUTES

1. *Initiative & Drives*
2. *Receptivity*
3. *Temperament*
4. *Discipline*
5. *Dedication to work*
6. *Was there any occasion to find any serious fault with his/her work/conduct?*
7. *Has he/she done any original outstanding work or shown any special ability or aptitude.*
8. *Has any defect been brought to his/her notice in the past and to what extent he/she has shown improvement.*
9. *Additional general remarks.”*

In view of the above, placing reliance on the Students Response Survey which covers only one of the aforesaid parameters cannot be safely relied to accept the contention of the petitioner regarding her alleged outstanding work and performance. The argument of the petitioner regarding her performance based on Student Survey Grades is also rejected.

17. Regarding the work and performance of the petitioner upon reference to the assessment of the petitioner in the Quarterly Appraisal Reports (**R-1/1**) makes it apparent that the petitioner was assessed under all the different parameters as mentioned above. Initially the petitioner was graded as ‘Good’ in first 2 quarterly reports. Thereafter, as ‘Satisfactory’ or for the next 3 quarterly appraisals and thereafter as ‘Poor’ for the next 6 Quarterly Appraisal Reports. Thus the overall work of the petitioner cannot be said to be satisfactory. The work of the petitioner has also not been satisfactory on account of her failure to get the requisite 2 SCI Research Publications (published with M/s Thompson and Reuters) as required by the University even during the course of her employment and the probation period.

18. The petitioner has alleged *mala fides* and bias against respondent Nos. 3, 5 and 6. It is her submission that her original Head of Department graded her as good while new Head of Department i.e. respondent No. 5 has graded her as “Poor”. In this regard, it is apparent that first six (06) quarterly appraisal reports are recorded by her original Head of Department i.e. Dr. Dinesh Goyal which reveals that even Dr. Dinesh Goyal has found her work to be deteriorating and assessed her ‘Good’ for the first 2 reports, ‘Satisfactory’ in the next 3 reports and ‘Poor’ in the 6th quarterly appraisal report. The allegations of the petitioner that her Head of Department i.e. respondent No. 5 acted in the *mala fide* and bias manner because she wanted to have the petitioner removed from her service so as to accommodate her own husband i.e. Mr. Abhijit Ganguli is also unsustainable as the petitioner has been unable to refute that husband of respondent No. 5 was an Associate professor (whereas the petitioner was working on the lower rank as Assistant Professor) and the removal of the petitioner cannot give any benefit to the husband of respondent No. 5.

Moreover the post of Assistant Professor was also advertised by public notice on 16.05.2018 (R-1/5) before the discharge of the petitioner and husband of respondent No. 5 did not apply either for the post of Assistant professor or for the post of Associate Professor. It is thus apparent that the allegations of *mala fides* and bias are devoid of merit and are rejected.

19. From the aforesaid facts and legal position discussed above, the Respondent-University has to maintain the minimum standards of qualification prescribed by the University Grants Commission and the UGC Regulations 2010 in respect of the Respondent-University being unaided -

self financed University are only directory in nature. While adhering to the minimum standards of qualifications, the Respondent-University has prescribed additional qualifications and norms in their General and Service Regulations and the acceptance of the employment of Assistant Professor by the petitioner was on these expressed terms and conditions which are applicable to the petitioner. The discharge of the petitioner by the impugned Order dated 07.06.2018 (**P-6**) cannot be said to be contrary to the terms and conditions of service of the petitioner and is based on the assessed work and performance of the petitioner. In these circumstances, present writ petition is **dismissed**.

No costs.

Pending miscellaneous application(s), if any, stand(s) disposed of.

March 5th, 2019

'dk kamra'

**(JASWANT SINGH)
JUDGE**

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>