

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

1.

CWP-18066-2020

Date of Decision:05.04.2021

Neha Miglani

...Petitioner

Versus

National Institute of Technology, Kurukshetra and another

....Respondents

2.

CWP-19242-2020

Mukesh Kumar

...Petitioner

Versus

National Institute of Technology, Kurukshetra and another

....Respondents

CORAM: HON'BLE MR JUSTICE ARUN MONGA

Present: - Mr.Tejpal Singh Dhull, Advocate,
for the petitioner.

Mr.A.S. Virk, Advocate,
for respondent No.1 & 2.

(Presence has been marked through video conferencing)

ARUN MONGA, J.

Vide this single order, above two writ petitions are being disposed of as common issues and facts are involved therein.

2. For convenience, facts/annexures are being referred from CWP-18066-2020.

3. Grievance of the petitioner is that while being in service other similarly situated faculty members are allowed to do their Ph.D, but petitioner has been denied the same permission by adopting a discriminatory yardstick.

4. A writ of certiorari has been sought to quash the impugned order dated 12.10.2020 vide which respondent No.2-Institute i.e. National Institute of Technology declined to issue an NOC to the petitioner for taking admission in the course of Ph.D in Kurukshetra University (respondent No.2).

5. As regards the admission already taken by the petitioner in the course of Ph.D, subject to furnishing of NOC, the same was protected by an interim order dated 03.11.2020 passed by this Court whereby respondent No.2/Kurukshetra University was under interim direction of this Court not to cancel the Ph.D. seat of the petitioner. Pursuant thereto, the petitioner is currently pursuing her Ph.D.

6. Brief fact narrative first. Respondent No.1-Institute advertised the post of temporary faculty/Assistant Professor in the year 2017 on contract basis. In pursuance of the advertisement, petitioner was selected and was subsequently appointed as Assistant Professor/temporary faculty in Computer Engineering department. As per the appointment letter, following are the terms of appointment of the petitioner: -

“With reference to your application for the position of Temporary Faculty in response to the advertisement No.10/2017 of the Institute and on the recommendation of the Selection Committee, I am pleased to inform you that the Competent Authority of the Institute has approved your engagement as Temporary Faculty on a consolidated salary of Rs.40,000/- per month for a period upto the end of the current semester and extendable further upto five semesters depending on the performance as per Government/Institute Norms in the Department of Computer Engineering.

The terms and conditions of the appointment are as follows:

- 1. The conditions of your service in the Institute will be governed as per Rules as framed and amended from time to time by the Ministry of Human Resource Development, Government of India, New Delhi/NIT Council/ BOG, NIT Kurukshetra.*

2. *The engagement is subject to your being found physically fit and sound in health for the service in the institute.*
3. *You will be required to produce all original certificates in respect of your academic and other qualifications mentioned in your application form including date of birth along with relieving letter (if applicable) at the time of joining the position in the Establishment Section of the Institute.*
4. *You will perform your duty 5 days a week. In case of academic requirement, you have to perform duty on Saturday/Sunday and Gazetted holidays without any compensatory leave in lieu of this.*
5. *You will be granted one day's leave on completion of one month's service.*
6. *In case you want to leave your services, you shall be required to give one month notice or make payment of one month salary in lieu thereof provided that the institute may call upon you to continue until the end of the semester in which your notice is received.*
7. *You will be required to devote your whole time to your duties and perform such duties as may be assigned to you by the Director/Head of Department from time to time.*
8. *Depending upon the availability, you may be provided Institute accommodation and in case of non-availability you will have to make your own arrangement for your accommodation.*
9. *You will be entitled to avail only the available facility in the Health Centre of the Institute.*
10. *You will be governed by the Conduct and Disciplinary Rules of the Institute.*
11. *You shall be governed under the NIT Act, 2007/Statutes Rules of NIT Kurukshetra, framed and amended from time to time relating to service conditions and any other matters/conditions not specified in the appointment letter.*
12. *If any declaration given/information furnished by you is found to be false or if you are found to have willfully suppressed any material information/facts, you will be liable to be removed from service and any such other action as the competent authority may deem necessary.*

If this offer of appointment is acceptable to you on the above terms and conditions, you are required to report for duty on or before 11.08.2017 otherwise this offer will automatically stand cancelled.

7. While the petitioner was in service, respondent No.2 invited application for taking admission in the course of Ph.D pursuant where to the petitioner also applied and was granted the admission. However, one of the requirements mentioned by respondent No.2 for admission to Ph.D course was to obtain NOC from the employer in case a candidate was in employment. This is where trouble of the petitioner began with her employer, as the requisite NOC was declined by respondent No.1, notwithstanding that the Kurukshetra University where the petitioner applied for admission is situated in the vicinity of respondent No.1/NIT. The petitioner states that there are many similar situated persons who are working along with petitioner on similar terms and they are also pursuing their Ph.D course work and the respondent No.1 has no quibble with them. However, the petitioner approached the respondent No.1 for grant of no objection certificate for taking admission in to the course of Ph.D, no action has been taken on the requests of the petitioner till today. The details of persons who are allegedly similarly situated to the petitioner and are being allowed by the respondent No.1 to pursue their Ph.D course are also available on the website of the respondent No.1/Institute but are annexed as annexure P-9 herewith.

8. In return filed by Kurukshetra University, the insistence of NOC has been emphasized on the ground that an applicant, who is in employment, as per the Kurukshetra University Ordinance, has to submit application form through his/her employer. In case an applicant joined service after submission of the application form, he/she shall have to submit NOC before the enrollment.

9. Whereas the defence of respondent No.1 *inter alia*, hinges on that since the petitioner has been given appointment merely on a consolidated salary of Rs.40,000/- per month, she is not entitled to get any NOC on the ground of alleged parity sought by her with those who are working in Assured Grade Pay

(AGP). Further the stand taken by respondent No.1 is that the study leave is admissible only to a regular employee of the Institute. Even such an employee can apply for admission to any course only after seeking prior permission. The petitioner submitted her application for issuing NOC for Ph.D course on 21.09.2020. The perusal of the same clearly shows that she had already applied in the KUK for admission in Ph.D without seeking prior permission. As it stands, before any decision could be taken on the said application, the petitioner filed CWP No.16198/2020 in this Hon'ble High Court. The said CWP was disposed of vide order dated 05.10.2020 with a direction to the answering Respondent to take appropriate decision within a week. In compliance of the order dated 05/10/2020, the application of the petitioner was duly considered. Finding that the petitioner being not in the regular employment of the Institute, no NOC can be issued to her for Ph.D course and her request was declined.

10. Having heard rival contentions of the learned counsels, I am of the view that the stand taken by respondent No.1 in its return and argued also on the same lines flies in the face of Rule 11 of the Model Recruitment Rules For Faculty of NITs. For ready reference, the said Rule is reproduced as under:-

“A Ph.D degree shall be the minimum qualification for a regular faculty position in NIT. Candidates with M.Tech degrees may be appointed as Assistant Professors, on contract basis only. The Institutes will strive to provide necessary facilities to such contract faculty to complete their own Ph.D either within the Institutes (If facilities exist) or outside. Any deficiency in extension of such facility, however, will not be a ground for award of regular post without a Ph.D degree.

11. A perusal of the above would show that it is self incumbent on the institute to strive to provide necessary facilities to such contract faculty to complete their own Ph.D either within the institute, if facility exists, or outside. That being the position, it is rather intriguing that the petitioner is not being granted the requisite NOC. As regards, the defence that she is not entitled to the

study leave that is entirely a separate cause of action. Qua study leave, as and when occasion arises, the competent authority shall deal with the same in accordance with law, in case the petitioner seeks any such study leave.

12. To be also noted that, a perusal of the terms of the appointment as per the appointment letter read with employee Rules of the NIT would show that neither is there any prohibition in the appointment letter nor in the Model Rules framed by the NIT for its Faculty to pursue higher education. In fact on the contrary, as already noted, Rule 11A of Model Recruitment Rules for Faculty of NIT encourages the faculty members to improve their higher qualification by pursuing the same as far as availability of seats in the NIT itself, if available, if not then they have also been given the choice to pursue the same outside the NIT. Insipid distinction between an employee who is on consolidated salary as the petitioner herein with the one who is on Assured Grade Pay (AGP) is neither mentioned in the Model Rules nor even otherwise is legally sustainable. The same seems to have been brought out to defend the untenable position in declining the permission to the petitioner to pursue her Ph.D without there being any legal basis qua the same.

13. Accordingly, the writ petition is allowed, impugned order dated 12.10.2020 is quashed and respondent No.1 is directed to issue NOC in favour of the petitioner.

14. In the parting, I may also hasten to add that during the interregnum of the pendency of petition before this Court, respondent No.1-University vide a letter/notification dated 25.2.2021 has on its own relaxed the condition of seeking NOC for the prospective candidates. In the premises, I see no reason why similar benefit be not accorded to the petitioner herein. Once the University itself is not insisting for the same for the prospective students, it is expected that those who have taken the admission in the previous academic session should not be put to any hostile discrimination.

There is no reasonable basis for the University to insist for NOC for the last academic session once it has waived the same for the next academic session and onwards. Waiver of insisting for NOC from the employer is rather a laudable step taken by Kuurukshetra University in the healthy spirit that neither an employer should act oppressively, so as to stop an employee to pursue higher studies for improving on his/her career prospective, nor even University should create unnecessary hindrance in the right of a citizen to improve his/her education. Every citizen has a right to education himself/herself for his/her better accomplishments, provided of course, he/she is otherwise competent and meritorious to do so.

(ARUN MONGA)
JUDGE

05.04.2021

Vivek

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No