

\$~2

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 04.06.2021

+ LPA 181/2021 & CM APPL. 18427, 18428 & 18429/2021

DR. RITU SINGH Appellant
Through Mr. Mehmood Pracha, Adv.

versus

UNIVERSITY OF DELHI AND ORS Respondents
Through Mr. Ankur Chhibber,
Mr. Anshuman Mehrotra,
Mr. Nikunj Arora, Adv.
Mr. Nirvikar Verma, Adv. for
Respondent No.3/UOI.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE NAVIN CHAWLA
NAVIN CHAWLA, J. (Oral)

The appeal has been heard by way of video conferencing.

CM APPL. 18428/2021 (Exemption)

Allowed, subject to all just exceptions.

Accordingly, the application is disposed of.

CM APPL. 18429/2021 (Permission to File the Additional Documents)

Keeping in view the averments made in the application, the same is allowed.

Accordingly, the application stands disposed of.

Signature Not Verified

Digitally Signed

By: SHALGO BATRA

05.06.2021 17:50:00 LPA No.181/2021

LPA 181/2021 & CM APPL. 18427/2021

1. This appeal has been filed challenging the judgment and order dated of 12.03.2021 passed by the learned Single Judge of this Court in W.P.(C) No.8650/2020 filed by the appellant, dismissing the same.

2. Pursuant to an advertisement issued by the respondent no.2/College for making appointment to the post of Assistant Professor in Psychology on *ad-hoc* basis, the appellant was found successful and was appointed with effect from 05.08.2019. The offer of appointment was for a period from 05.08.2019 to 04.12.2019 or till the vacancy against which the appellant was appointed is filled through proper procedure laid down by the University of Delhi. The appellant was re-appointed to the said post vide letter dated 01.01.2020 from the period 01.01.2020 to 20.04.2020. The appellant claimed that even thereafter, as the semester had been extended till 12.06.2020 due to the lockdown declared on the outbreak of Covid-19 pandemic, the appellant continued to discharge her duties. The appellant further submits that even thereafter, various duties were assigned to her till as late as August, 2020. The appellant submits that on 11.08.2020, she was informed that her tenure has not been extended. Thereafter, she made a representation, however, the respondents issued a fresh advertisement for appointment to the said post. Being aggrieved, she filed the above petition.

3. The learned counsel for the appellant submits that the learned Single Judge has failed to appreciate that the appellant being an *ad-hoc* employee cannot be substituted with another employee employed on *ad-hoc* basis. He further submits that the respondent has acted with *mala fide*. He submits that the respondent has also not placed the entire record before the learned Single Judge in form of the attendance of the students in the Psychology (Hons.) classes taken by her and the result of the students in the said course.

4. He submits that the learned Single Judge has erred in placing reliance on an unsigned and unverified alleged complaint received by the respondent no.2 against the appellant from the students as against the WhatsApp messages that the appellant had placed on record from the students recording their appreciation for the teaching methods of the appellant. He submits that, in fact, the appellant was being victimized as she belongs to a Scheduled Caste category.

5. We have heard the learned counsel for the appellant, however, have found no merit in the submissions.

6. The learned Single Judge in his Impugned Order has also rejected similar submissions observing as under:-

"12. Having heard the learned counsels for the parties, the issue that arises for consideration is whether the respondent No.2 / College is justified in not allowing the petitioner to continue to work as Assistant Professor, Psychology on ad-hoc basis in the

respondent No.2 / College. The case of the respondent No.2 / College is primarily that complaints have been received from the students with regard to petitioner's manner of teaching. The respondent No.2 / College has also relied upon the results achieved by the students in Psychology examinations, which was the subject taught by the petitioner. It is their case also, that the attendance in the class of the petitioner has also been reduced as no student was interested in attending her class. In substance, the respondent No.2 / College highlighted the unsatisfactory performance of the petitioner as a teacher. The petitioner has controverted the stand of the respondent No.2 / College saying that the same is on the basis of false and fabricated complaint alleged to have been made by the students. Rather, the counsel for the petitioner has by relying upon the whatsapp messages, contended that the students were happy with the manner in which the petitioner was teaching the students. On a legal issue, it was contended by the counsel for the petitioner that the impugned advertisement, which was issued by the respondent No.2 with a purpose to replace the petitioner was clearly untenable, as an ad-hoc employee could not have been replaced by another ad-hoc employee. There is no dispute on the proposition of law but surely in view of the judgment of this Court in the case of *Ms. Shalini Sethi (supra)*, the said

proposition of law would not be applicable, if the termination sought to be affected is on the basis of unsatisfactory service.

*13. Having said that, insofar as the plea of unsatisfactory service is concerned, the respondent No.2 / College has relied upon the letter written by the students highlighting the unsatisfactory performance of the petitioner. That apart, they have relied upon the results in the Psychology examinations and also the fact that the attendance of the students in her class has reduced. Though, the petitioner has disputed the letter written by the students by stating that the same is fabricated but there is no denial to the fact that the attendance in the Psychology subject has reduced as well as the results of the students in the subject. These two aspects are co-related to the teacher, who is teaching the Psychology, i.e., the petitioner herein. The plea of the counsel for the petitioner that the decision of respondent No.2 / College, not to continue the services of petitioner is in violation of principles of natural justice as no notice was given eliciting the reply of the petitioner by relying on the Judgments of the Supreme Court in **A.K. Kripak (supra)** and **Maneka Gandhi (supra)** is also not appealing. This I say so in view of the stand of the respondent No.2 / College to continue with the services of the petitioner beyond the period of her engagement which was to*

end on December 4, 2019, on repeated assurances by the petitioner and representative of DUTA that petitioner will improve her teaching skills and will focus on the academic well-being of the students, which she could not improve as within few months of her engagement, the respondent No.2 / College started receiving complaints against the petitioner's lack of interest. This stand of the respondent No.2 / College has not been denied by the petitioner in the Rejoinder affidavit. So, it must be held, that there is sufficient compliance of principles of natural justice as, the appointment of the petitioner was on ad-hoc basis and as such has no right on the post. The judgments relied upon by the counsel for the petitioner on the aspect of natural justice are thus distinguishable in the facts of this case.

14. That apart, the final decision, not to allow the petitioner to continue as an ad-hoc lecturer is based on the subjective satisfaction arrived at by the Competent Authority in the respondent No.2 / College. Except for making bald allegations of mala fide, the petitioner has not even cared to implead the principal of the respondent No.2 / College in her personal capacity to substantiate her plea that the action of the Principal of respondent No.2 / College was mala fide, so that this Court may seek an affidavit with regard to the allegations so made by the petitioner. Suffice to state, that the

action, which has been taken by the respondent No.2 / College by issuing a fresh advertisement cannot be faulted and the other prayers as made for, by the petitioner seeking her re-instatement as Assistant Professor, Psychology in the respondent No.2 / College cannot be acceded to. "

7. It is not denied that the advertisement itself was for appointment on *ad-hoc* basis. The tenure of such appointment was also specified. Though the learned counsel for the appellant has submitted that the respondent no. 2 has acted out of malice against the appellant, however, on being queried he could not show any averment in this regard in the writ petition filed by the appellant. Nor was the Principal of the respondent no. 2, against whom he now alleges malice, added as a party respondent.

8. As far as the reliance of the respondent no. 2 on an unsigned and unverified complaint is concerned, the respondent no. 2 as also the learned Single Judge has also placed reliance on other factors like the reduced attendance in the class taught by the appellant as also the result of the students. The submission of the appellant that for the same result in other subjects, the teachers teaching such other subjects were not penalized, is again merely an afterthought and cannot be a ground for interference in this appeal. The nature of appointment of such teachers and the overall assessment of such teachers is not in question before this Court in this appeal.

9. The submission of the learned counsel for the appellant that the appellant was victimized for being a Scheduled Caste category candidate is merely recorded to be rejected. The appointment of the appellant was to a post reserved for a Scheduled Caste category and, there is no such allegation of victimization of the appellant on the basis of her caste made in the writ petition filed by the appellant.

10. In view of the above, we find no merit in the present appeal, the same is dismissed. There shall be no order as to costs.

11. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

NAVIN CHAWLA, J

MANMOHAN, J

**JUNE 4, 2021
RN/U.**