

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.10198 of 2021

Himanshu Bhushan Mishra *Petitioner*

-versus-

State of Odisha & Ors. *Opp. Parties*

Advocates appeared in the case:

For Petitioner : *Mr. Kali Prasanna Mishra, Sr.*
Adv.

-versus-

For Opp. Parties : *Mr. G.R. Mohapatra, ASC*
Mr. S. Palit, Sr. (Adv.)
(for O.P.3)
Mr. T.K. Satapathy, Adv.
(for intervener)

CORAM:
DR. JUSTICE S.K. PANIGRAHI

DATE OF HEARING:-29.08.2022

DATE OF JUDGMENT:-23.12.2022

Dr. S.K. Panigrahi, J.

1. The petitioner in the abovementioned Writ Petition has challenged the advertisement dated 08.03.2021 issued by the Institute of Management and information Technology,

Cuttack (“the college”) for engagement of resource persons on contractual basis in the MBA Department; for a semester on the ground that the decision of the college is pervasive which arbitrarily deprives him of his rightful employment.

I. FACTUAL MATRIX OF THE CASE:

2. The petitioner was appointed as a contractual faculty in MBA Department in the college on 01.08.2019 for the post of Asst. Professor with a consolidated remuneration of Rs.30,000/- per month till 31.12.2019 or till regular appointment is done, whichever is earlier. It was further stipulated that the engagement made therein is purely temporary basis and terminable at any time. Therein, it was explicitly mentioned that the order of engagement does not construe a basis for claiming any regular or permanent appointment in future.
3. A walk-in-interview was conducted by the college on 30.12.2019 where his engagement was extended till 30.6.2020. Later, his engagement was finally extended to 31.03.2021; till regular /contractual appointment is done through advertisement, whichever is earlier. It was restated that the order does not construe a basis for claiming any regular or permanent appointment in future.
4. While the petitioner continued his engagement as Asst. Professor in MBA programme, the Opposite Party No.3 published one advertisement on 08.03.2021 inviting

candidates to a walk-in-interview for engagement of resource persons on purely temporary basis in MBA programme.

5. The present writ petitioners mainly assail the impugned advertisement on the ground that the college should not publish such advertisement for contractual appointment when their present employee i.e. the petitioner possesses requisite qualification to be appointed in the said post and two regular posts are laying vacant in the MBA faculty. Therefore, it is argued that the impugned advertisement is arbitrary, illegal, without jurisdiction and *non-est* in the eye of law and it violates Article 14 and 19 of the Constitution of India.

II. PETITIONER'S SUBMISSIONS:

6. Learned counsel for the Petitioner earnestly submitted that the petitioner possesses all the requisite qualifications for the given post and since the date of his initial appointment, the petitioner has performed his duty to the utmost satisfaction to the authority and there was no complaint whatsoever against the petitioner from any quarter.
7. The counsel for the petitioner has cited a catena of judgements, more importantly, the Supreme Court pronouncements in *State Of Haryana and ors. v. Piara Singh* and *Secretary¹, State Of Karnataka vs Umadevi²* to contend

¹ (1992) 4 SCC 118

that a contractual employee cannot be replaced by another contractual employee, and the authority cannot hold an interview to replace the contractual lecturer with another set of contractual lecturers as it is contrary to law and against the settled position set out by the Apex Court. For this, there is no reason to publish such advertisement for contractual appointment for MBA faculty where the petitioner is still continuing.

8. The petitioner shed light on the fact that the petitioner had approached this Court, ventilating his grievances, praying *inter alia* to quash the impugned advertisement and further to allow the Petitioner to continue in the post held by the Petitioner till a regular appointment is made by the Opp. Party. Thereafter, this Court vide order dated 18.03.2021 had issued a notice to the Opp. Parties and as an interim measure had directed that selection process to the post of Asst. Professor on a contractual basis, so far it relates to resource person in MBA Department, may continue but no final decision shall be made without the leave of this Court.
9. It was submitted that petitioner was contractually appointed with an assurance of regular selection. Therefore, the appointment is not sacrosanct under law for which necessary direction may be issued to the Opposite Party No.3 for

² (2006) 4 SCC 1

continuance of the petitioner till regular selection is made which was essence of the contractual employment made from 01.08.2019.

10. It was also stated that three contractual faculty in the MCA Department of the college have been rendering their services since the year 2015, and in view of the settled position of law, their services have been protected by the learned State Administrative Tribunal, Cuttack Bench, Cuttack. In the Department of MCA, 3 persons namely Satya Prakash Swain, Mrs. Sujata Ray and Mrs. Srotri Pragyan Swain who were appointed on contractual basis in the year 2015 and they are continuing till date by virtue of the interference of the learned SAT, Cuttack Bench, Cuttack. But now, Opposite Party No.3 is intentionally issuing advertisement for contractual engagement to deprive the petitioner for MBA faculty, which is intentional and depicts the malafide intention to harass the petitioner. Hence, it is a fit case for interference of the Hon'ble Court for the interest of justice.
11. The petitioner is age barred to get any appointment in the Government service as well as in Semi Government service at this stage. He will have difficulties in maintaining his family. In view of the above, the petitioner may be allowed to continue in his post till regular post is filled up by the authority.

III. OPPOSITE PARTIES' SUBMISSIONS:

12. Per *contra*, Learned counsel for the Opp. party intently submitted that the impugned advertisement is not illegal or arbitrary. The walk-in-interview process is regularly conducted for recruitment of faculty for periods of six months on a contractual basis, to compensate for the lack of regular faculty. The present Petitioner had also been initially appointed on the basis of such walk-in-interview conducted in 2019. Furthermore, similar procedure is also being followed by several other educational institutes in order to compensate for the dearth of regular faculty members.
13. In order to rebut the submission of the petitioner, it was elucidated that the extension granted to the petitioner was merely on account of the imposition of COVID-19 restrictions when no further walk-in-interviews could be conducted, as is evident from the fact that each extension was merely for a period of 3 months.
14. It was submitted that the allegations of malafide against the present Opp. Party No.3 are utterly false and preposterous. It was argued that the selection is made through a rigorous selection process. On 19.03.2021, the Petitioner was categorically advised by the college authorities to appear in Walk-in-Interview, and assured him that he would be selected for the post. However, the Petitioner did not heed the advice

of the college authorities, even though he was present on the premises on the date of the interview.

15. It was also submitted that the position of law as presented by the petitioner is based on its wrong interpretation. It was argued that the Supreme Court, in the case of *State of Haryana vs. Piara Singh* (supra) had for the first time laid down that, one set of ad-hoc employee cannot be replaced by another set of ad-hoc employees. Such precedence of law does not in any way refer to or cover in its ambit. It covers the contractual employees. It is submitted here that rights of the contractual employees can only be decided before the appropriate labour forum. It is further humbly submitted here that, the Petitioner has been continuing since 01.08.2019, however, he has appeared and was accordingly selected in each walk-in-interview conducted for such contractual posts. However, the Petitioner has never challenged any of the prior advertisements and the present writ petition is therefore liable to be dismissed *in limine*.
16. It is submitted that the petitioner was engaged as a contractual employee. His engagement also ended as per the term of the engagement. It is well settled under the law that a contractual employee is not vested with the right to continue beyond the period one has been engaged. *Ergo*, the present petitioner has no *locus standi* to challenge the

disengagement/selection of contractual employees or the reinstatement of the disengaged guest faculties.

17. It was further submitted that the Opp. Party No.3 was informed regarding the interim order dated 18.03.2021 passed by this Court on 22.03.2021. In the meantime, the walk-in-interview was conducted on 19.3.2021 and two persons were selected and engagement letters were also issued to them. Accordingly, they joined on 19.3.2021. However, upon receipt of the certified copy of the aforementioned interim order, the engagement letters issued have been put on hold and their engagement has been discontinued.

IV. ISSUES FOR CONSIDERATION:

18. Having heard learned advocates appearing for the sides and having gone through the material on record, it appears that before dealing with the central issue raised in the petition, following few facts are worth taken note of:-

- a. From the record, it is clear that the petitioner had been contractually appointed on purely temporary basis and terminable at any time. Therein, it was explicitly mentioned that the order of engagement does not construe a basis for claiming any regular or permanent appointment in future.
- b. The letter of appointment further indicates that the petitioner is has been appointed for a specific term.

- c. It is indicated that the petitioner was paid a consolidated remuneration of Rs.30,000/- against his appointment. It is pertinent to note that the petitioner was not paid wages or salary but a fixed honorarium every month for the period of work.
- d. At the time of extension of the concerned period of appointment, it was reiterated that the petitioner's services were contractual only and that the reappointment does not construe a basis for claiming any regular or permanent appointment in future.
19. If the aforesaid factors are weighed in the scales, it is clear that the factors which make the contract one for service outweigh the factors which would point in the opposite direction. First and foremost, the intention of the parties is to be gathered from the terms of the contract. The terms of the contract make it clear that the contract is one for temporary service, and that with effect from the date on which the contract ends, the service of the petitioner shall be terminable provided it is not regularized first. Secondly, the remuneration is described as honorarium, and consistent with the position that the petitioner is a contractual employee working in the Institute in his own right. Thirdly, he entered into the initial agreement on the clear terms as the agreement was for five months, which was extended later, as clarified by the counsel for Opp.

Party 3, due to COVID exigency. Fourthly, his services cannot be terminated in the usual manner as the other regular employees of the Institute but are terminable anytime. The fact that the petitioner has done his job with utmost honesty and his entire attention to the Institute would not necessarily lead to the conclusion that, de hors all other factors, the contract is one of contractual service.

20. The petitioner does not have any vested right to continue in the said post. Since the appointment was purely on contractual and ad hoc basis on consolidated pay for a fixed period and terminable without notice, when the appointment came to an end by efflux of time.
21. The relevant observations contained in the following decisions of the Apex Court with regard to the status of a contractual employment, some of the relevant observations of the case makes the position crystal clear. In the case of *Yogesh Mahajan vs. Professor R.C. Deka, Director, All India Institute of Medical Sciences*,³ the Apex Court has observed as under:-

“6. It is settled law that no contract employee has a right to have his or her contract renewed from time to time. That being so, we are in agreement with the Central Administrative Tribunal and the High Court that the petitioner was unable to show any statutory or other right to have his

³ (2018) 3 SCC 218

contract extended beyond 30th June, 2010. At best, the petitioner could claim that the concerned authorities should consider extending his contract. We find that in fact due consideration was given to this and in spite of a favourable recommendation having been made, the All India Institute of Medical Sciences did not find it appropriate or necessary to continue with his services on a contractual basis. We do not find any arbitrariness in the view taken by the concerned authorities and therefore reject this contention of the petitioner.

7. We are also in agreement with the view expressed by the Central Administrative Tribunal and the High Court that the petitioner is not entitled to the benefit of the decision of this Court in Uma Devi. There is nothing on record to indicate that the appointment of the petitioner on a contractual basis or on an ad hoc basis was made in accordance with any regular procedure or by following the necessary rules. That being so, no right accrues in favour of the petitioner for regularisation of his services. The decision in Uma Devi does not advance the case of the petitioner."

22. The Supreme Court in the case of *Secretary, State Of Karnataka v. Umadevi*⁴ held that:

"In Madhyamik Shiksha Parishad, U.P. Vs. Anil Kumar Mishra and Others; a three judge bench of this Court held that ad hoc appointees/temporary employees engaged on

ad hoc basis and paid on piece rate basis for certain clerical work and discontinued on completion of their task, were not entitled to reinstatement or regularization of their services even if their working period ranged from one to two years. This decision indicates that if the engagement was made in a particular work or in connection with particular project, on completion of that work or of that project, those who were temporarily engaged or employed in that work or project could not claim any right to continue in service and the High Court cannot direct that they be continued or absorbed elsewhere."

....

38. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue

them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post."

23. From the submissions of the petitioner, it seems that they have misinterpreted the directions given by the Apex Court. In *Umadevi* (supra), the Supreme Court has thoroughly examined the observations of the Court in *Piara Singh* (supra) and concluded that it cannot be said that this decision has laid down the law that all ad hoc, temporary or casual employees engaged, without following the regular recruitment procedure should, be made permanent. There cannot be any absolute rule or principle that one ad hoc or temporary appointee can never be replaced by another ad hoc or temporary appointee.
24. Normally, what is sought for by such temporary employees when they approach the court is the issue of a writ of mandamus directing the employer to absorb them in permanent service or to allow them to continue. In this context, the question arises whether a mandamus could be issued in favour of such persons. Now, it is trite in law that in order that a mandamus may be issued to compel the authorities to do something, it must be shown that the a

statute imposes a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it. This classical position continues and a mandamus could not be issued in favour of the employees directing the employer to re-appoint or make them permanent, since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them permanent.

25. In the case of *Oshiar Prasad and others vs. Employers in Relation to Management of Sudamdih Coal Washery of M/s. Bharat Coking Coal Ltd., Dhanbad, Jharkhand*,⁵ the Apex Court has observed as under:

“25. It is a settled principle of law that absorption and regularization in the service can be claimed or/and granted only when the contract of employment subsists and is in force inter se employee and employer. Once it comes to an end either by efflux of time or as per the terms of the Contract of employment or by its termination by the employer, then in such event, the relationship of employee and employer comes to an end and no longer subsists except for the limited purpose to examine the legality and correctness of its termination.”

26. On the basis of the terms and conditions visible on record coupled with the honorary status having been accepted

⁵ (2015) 4 SCC 71

throughout by the petitioner, in the considered opinion of this Court, it is not open for the petitioner now to approach the Court with a request to reinstate him to the concerned post irrespective of the fact that he has continued for quite some time. Mere continuance in service as a contractual employee would not give any leverage to the petitioner to claim as if he is a permanent employee.

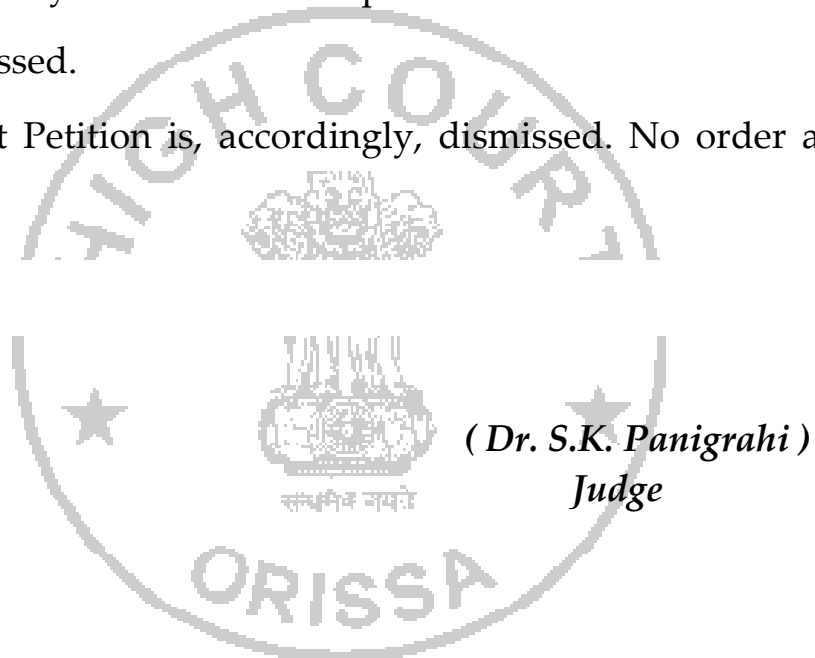
27. On a survey of authorities, the predominant view appears to be that such appointments did not confer any right on the appointees and the Court cannot direct their absorption or regularization or re-engagement or making them permanent. That being the position, it appears to this Court that hardly a cogent case is made out by the petitioner to call for any interference to grant any relief as prayed for.
28. However, here I would also like to reemphasize that teachers' motivation and efficacy are paramount for better learning, and so key to any discourse on quality in education. Among the most critical factors connected to motivation are the terms of service. It is imperative that teachers get regularized posts in the educational institutions and ad hocism be shifted to a permanent system.

V. CONCLUSION:

29. As such, the impugned advertisement is legal, fair and not in contravention with any law of the State. The Opposite Parties

have not committed any illegality, nor have they promulgated the impugned advertisement in a manner which renders it discriminatory against anyone or in discordance with the State provisions, or the present position of law.

30. In light of the aforesaid discussion and having regard to the present position of law, I have no hesitation in coming to the conclusion that the writ petitioner cannot be granted any relief by way of a writ and the present Writ Petition is liable to be dismissed.
31. The Writ Petition is, accordingly, dismissed. No order as to cost.



*Orissa High Court, Cuttack,
Dated the 23rd Dec. 2022/B. Jhankar*