

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

**CWP No. 6739 of 2020 (O&M)
Reserved on: November 14, 2022
Pronounced on: December 22, 2022**

Reetika

...Petitioner

Versus

Punjabi University and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Ranjit Kalra, Advocate
for the petitioner.

Mr. Ajaivir Singh, Advocate,
for respondents.

JAISHREE THAKUR J.

1. The present writ petition has been filed under Article 226 of the Constitution of India seeking issuance of a writ in the nature of Certiorari for quashing order dated 13.9.2019 (Annexure P-17) to the extent that the services of the petitioner have been made contractual w.e.f. the date of issue of said order, instead of extending her ad hoc appointment and further to the extent that the grade pay of ₹4,200/- has been reduced to ₹3200/- and further for quashing any other order passed on file which has led to the passing of order dated 13.09.2019.

2. In brief, the facts as stated are that the respondent University has been engaging employees on contractual basis for functioning of the University. The Syndicate of the University, being its Principal Executive Body, responsible for the management and administration of revenue and

property of the University, in its meeting dated 20.6.2011 recommended to prescribe the modalities to regularize contractual employees who had rendered 3 years of service as such, into regular ad hoc employees with the respondent University. In furtherance to the said meeting, vide minutes recorded on 6.7.2011, the Committee so constituted recommended that on every last day of the month, the employees who have completed 3 years of contract service be considered for ad hoc employment.

3. The petitioner was issued an appointment letter dated 07.08.2013 on contract basis as Office Assistant with the respondent University upon recommendations of the Selection Committee. In light of the decision of the Syndicate taken in its meeting on 26.06.2011 (Annexure P-1), the respondents vide order dated 16.12.2016 (Annexure P-5) placed the petitioner on ad hoc basis and granted her regular pay scale of ₹ 10,300-34,800 + 4200 grade pay. This scale was given approval in the syndicate meeting held on 15.6.2016 to place the post of the Office Assistant appointed on contract at the rate of ₹10,000/- per month to regular pay scale of ₹10,300-34,800 + 4200 grade pay.

4. Thereafter, in light of the financial condition of the University being sound, the Syndicate in its meeting dated 19.03.2018 decided that the cases for converting Punjabi Media Projects Office Assistant post from contractual to regular ad hoc be reconsidered and till such time, it was directed that the payment of lump sum amount be continued. The services of the petitioner were shifted back to being on contract with lump sum amount of ₹ 10,000/- per month and her services were extended from 17.6.2017 to 16.12.2017. Aggrieved against the action of the University in not extending her period of an adhoc employee and treating her to be a contractual employee

again with reduction of the pay admissible, a representation dated 10.10.2017 (Annexure P-10) was preferred by the petitioner and extension in service as an ad hoc employee was sought. Various other representations were subsequently made but those were never decided and the impugned order Annexure P/17 came to be passed. Hence the instant writ petition.

5. Learned counsel for the petitioner would contend that prior to converting the services of the petitioner from contractual to adhoc and granting regular pay scale, the Syndicate in its meeting held on 15.06.2016 (Annexure P-6) approved the budget provision for the post on which the petitioner was rendering her services. The services of the petitioner were considered by the Syndicate in its meeting held on 23.12.2017 and her appointment was again approved as an adhoc employee. It is submitted that in the Syndicate meeting held on 19.03.2018, there was no direction to reconsider the cases of the employees who had already been given adhoc appointments; rather it was in cases of only those employees who were eligible for adhoc appointment, but were still being continued as contractual employees. However, the services of the petitioner were shifted to contractual employee from 17.06.2017 and were extended from 17.06.2017 till 16.12.2017 on lump-sum basis instead of granting adhoc extension on full scale pay as had already been granted by the Syndicate in its meeting held on 23.12.2017. The other employees who were extended the benefit of adhoc appointment in pursuance to the decision of Syndicate held on 20.06.2011 are being continued to retain the said benefits and the petitioner is, therefore, being discriminated against. The appointment of the petitioner on contract, vide order dated 13.09.2019 (Annexure P/17), washed away all previous service rendered by her. He also points out the case

of one Smt. Vimpy Parmar, who was also granted the benefit of adhoc appointment on the same day as was the petitioner, is still continuing as adhoc employee (Annexure P-11). Learned counsel has also relied upon the judgments rendered by this Court in **Kulbir Singh Versus Pepsu Road Transport Corporation and another 2016 (4) S.C.T. 441, Hari Ram and others Versus Pepsu Road Transport Corporation, Nabha Road, Patiala 2017 (6) SLR 176 and Vinod Kumari Sharma Versus State of Punjab and others 2019 (3) S.C.T. 351**, to contend that paucity of funds would not be a ground for reverting the petitioner to being a contractual employee.

6. Per contra, learned counsel for the University argued that the decision was not made applicable upon the petitioner alone, but the Syndicate, which is the highest decision making body in the University, has taken this decision to downgrade the pay in regard to a number of employees. On 21.08.2019, the Syndicate passed a resolution that the pay scale of the post on which the present petitioner was working i.e. Office Assistant (contract), Sophisticated Instruments Centre and one Sh. Jashandeep Singh, Office Assistant (contract), Punjabi Pedia Centre be downgraded from ₹ 10,300-34,800 + 4200 to 10,300 - 34,800 + 3200. It is further submitted that the case of Smt. Vimpy Parmar who is being kept in the pay grade of ₹ 10,300 - 34,800 + 4800 is totally different from the case of the present petitioner. The post against which Smt. Vimpy Parmar has been working, already existed in the budget in the regular pay scale of ₹ 10,300 - 34,800 + 4800 and her services were placed on adhoc basis after the completion of 3 years service on contract basis as per the decision of the Syndicate dated 20.06.2011. Smt. Vimpy Parmar was placed in this regular pay grade in the year 2011, when the

petitioner had not even joined the services.

7. I have heard the counsel for the parties and with their assistance have gone through the pleadings of the case.

8. The claim of the petitioner is for grant of regular pay scale as given to an adhoc employee which benefit has been withdrawn pursuant to a decision taken by the Syndicate with a further claim to treat the petitioner to be a regular adhoc employee. The petitioner who was initially appointed on contract basis as Office Assistant on 7.8. 2013 was subsequently placed as adhoc employee in the regular pay scale of ₹ 10,300– 34,800+ grade pay of ₹4200, vide order dated 16.12.2016. The office order was issued on the basis of the decision taken by the Syndicate on 20.6.2011 regarding placing contractual employees who had worked for more than 3 years on contract basis, as adhoc employee. However, this office order was later on rescinded by the decision taken by the Syndicate itself on account of financial constraints. Consequently, the services of the petitioner were shifted back to contract basis with effect from 17.6.2017.

9. The Syndicate in its meeting held on 19.03.2018 took note of the fact that in an earlier Syndicate meeting held on 23.12.2017 budget had been approved for converting Punjabi Pedia Projects Office Asst (contract) post at ₹ 10,000 lump-sum per month to one in the regular scale of ₹10,300–34800+ ₹4200 grade pay. However, it was noted that besides the above said case, there were many others for whom approval had been given to regularize the pay of contract basis employees to that of in the regular scale. The financial condition of the University was not sound and that the decision should be taken giving consideration to every aspect of each case. Based on this deliberation, it was

decided that each of such employees working in these posts would be paid ₹ 10,000/- in lump sum. The University is well within its right to look into the overall financial viability considering the fact that it is not fully self sufficient and has to look at the State Government for financial support.

10. In a recent case of **Punjab State Co operative Milk Producers Federation Ltd. Vs Balbir Kumar Walia 2021(8) SCC 784**, the issue that came up for consideration before the Supreme Court was, whether employees of Punjab State Cooperative Milk Producers Federation Ltd. were entitled to pay scale equivalent to their counterparts in the State of Punjab w.e.f. 01.01.1986 in place of the revised pay scale that had been allowed by the Federation with effect from 01.01.1994. The primary thrust of the arguments before the Supreme Court was that the Committee had taken a conscious decision not to grant pay scale as revised by the government since there were financial constraints. The Board of Directors had approved the said decision as well. The Supreme Court, while delineating on the subject, took note of several judgments as rendered by the Supreme Court and came to the conclusion that financial stringency can be treated as a ground to deny higher pay scales. The question whether the decision not to grant higher pay scales, could have been interfered with in exercise of power of judicial review, was also gone into. In para 43 of the judgment referred to above, it was held :

*“43. The power of judicial review over the administrative decisions of the State was examined by a judgment of this Court in **Tata Cellular v. Union of India (1994) 6 SCC 651**. Though, that is a case of grant of contract, but the principles of law are very well applicable to the exercise of power of judicial review by the High Court in the administrative decisions of the State within the meaning of Article 12 of the Constitution. The Court held as*

under:

"77. The duty of the court is to confine itself to the question of legality. Its concern should be:

- 1. Whether a decision-making authority exceeded its powers?*
- 2. Committed an error of law,*
- 3. committed a breach of the rules of natural justice,*
- 4. reached a decision which no reasonable tribunal would have reached or,*
- 5. abused its powers.*

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfillment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

- (i) Illegality : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.*
- (ii) Irrationality, namely, Wednesbury unreasonableness.*
- (iii) Procedural impropriety.*

*The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in **R. v. Secretary of State for the Home Department, ex Brind [(1991) 1 AC 696]**, Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, "consider whether something has gone wrong of a nature and degree which requires its intervention".*

xx xx xx

94. The principles deducible from the above are:

- (1) The modern trend points to judicial restraint in*

administrative action.

(2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

(3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

(4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

Based on these principles we will examine the facts of this case since they commend to us as the correct principles."

11. It is well settled that the High Court in writ jurisdiction would not sit over in appeal over an administrative decision. The court is to examine, whether there is any infirmity in the decision making process which would call for intervention of the High Court, and while examining the same it would see if any legal right has been violated. In the case in hand, the decision to make

contract employees, who had been appointed through regular selection, as adhoc regular employee on completion of three years was taken by the Syndicate. However, it was decided that such a decision would have a financial impact on the University as others would also assert the same claim. Therefore, taking strength from the judgments rendered in ***Tata Cellular v. Union of India (1994) 6 SCC 651***, ***West Bengal Central School Service Commission & Ors. v. Abdul Halim & Ors. (2019) 18 SCC 39*** and ***Punjab State Co operative Milk Producers Federation Ltd. (supra)***, when a decision is taken by the Syndicate, keeping the financial viability of the University in mind, the said decision cannot be faulted under Article 226 of the Constitution of India.

12. The petitioner is relying on judgments, as cited above, to argue that financial viability cannot be a ground to make the petitioner a contract employee at the rate of ₹ 10,000/- lumpsum per month, after allowing her to work as an adhoc, which are not applicable to the facts in hand. All judgments pertain to release of pension and in that eventuality the courts have held that pension must be released and financial viability cannot be a ground to deny it. Even the interim orders are not relevant since the salary was being withheld. Here, the issue is a decision taken by the Syndicate to rescind decision taken on an earlier occasion. It cannot be lost sight of the fact that the petitioner was employed on contract basis and the contract was being extended from time to time. The order dated 16.12.2016 placing the petitioner as adhoc regular employee in the pay scale of ₹ 10,300 – 34 800+4200 grade pay was also for a period of six months and extension was not given since the Syndicate decided as such.

13. However, the decision of the Syndicate to pay the petitioner

₹10,000/- lump sum per month only, must be in consonance with the judgment as rendered in **State of Punjab Vs Jagjit Singh 2016 AIR SC 5176** where it has been held that by applying Article 14 of the Constitution of India even a temporary employee (differently designated as work-charge, daily wage, casual, ad-hoc, contractual, and the like), de hors the manner of selection and appointment, can be directed to be paid wages equal to the salary at the lowest grade of a regular employee, discharging the same duties.

14. Consequently the writ petition is allowed to the limited extent, directing the Syndicate to consider granting a pay scale to the petitioner in the light of the judgment rendered in **State of Punjab Vs Jagjit Singh (Supra)**. The other reliefs of treating the petitioner as adhoc employee in the pay scale of ₹ 10,300 – 34 800+4200 grade pay stands rejected.

December 22, 2022
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	No