

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

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CWP No.17117 of 2018 (O&M)
DATE OF DECISION: 18th NOVEMBER, 2022

Dr. Saswat Patra

.... **Petitioner**

Versus

Union of India and another

.... **Respondents**

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Sumit Batra, Advocates
for the petitioner.

Mr. Arun Gosain, Advocate,
Senior Govt. Counsel,
for the respondents-UOI.

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RAJBIR SEHRAWAT, J. (Oral)

This is a petition filed under Articles 226/227 of the Constitution of India seeking issuance of appropriate writ, order or direction especially in the nature of Certiorari for quashing the impugned order dated 03.11.2017 (Annexure P-11), whereby respondent No.2 passed an order terminating the service of the petitioner, with certain another prayer made in the present petition.

The facts, as per the record of the present petition, are that the respondent-Institute had advertised certain posts in the cadre of Assistant Professor, Associate Professor and Professor. The essential qualifications prescribed for the said posts were as under:-

“xxxx xxxxx xxxx Minimum qualification for all faculty positions is a Ph.D in appropriate branch with first class or equivalent at the preceding degree, with a very good academic record throughout and demonstrated research capabilities. In addition, for Professor, minimum of 10 years experience (of which at least 4 years should be at the level of Associate Professor in IITs, IISc Bangalore, IIMs, NITIE Mumbai and IISERs or at an equivalent level in any such other Indian or foreign institution/institutions of comparable standards as may be so decided by the Institute) is mandatory. For Associate Professor, minimum 6 years teaching/research/industrial experience (of which at least 3 years should be at the level of Assistant Professor or equivalent) is mandatory. For Assistant Professor, minimum three years of teaching/research/industrial experience is mandatory. A fresh Ph.D or those who have submitted their doctoral dissertation may be considered for appointment on a consolidated monthly remuneration. xxx xxxxx xxxx”

The petitioner was having a post graduate management degree in the field of Finance. Besides that, he was also having a completed Ph.D. degree. Not only that, the petitioner had written some research papers and had submitted the same for publication to the appropriate journal. Feeling well qualified as per the requirement of the said advertisement, the petitioner applied for the post. He was selected as per his merit and was appointed vide appointment letter dated 09.05.2017. The appointment letter contained a stipulation that the

respondent-Institute reserved the right to terminate the service of the petitioner by giving either three months notice or the salary for three months in lieu thereof. As per the terms of the appointment letter, the respondent-Institute served a notice dated 19.07.2017 upon the petitioner to the effect that his appointment was found to be defective on account of non-publication of the research papers mentioned by him in the application form. Therefore, the petitioner was granted a time of one year to get the said research papers published. However, before the said period of one year could expire, the respondent-Institute has terminated the service of the petitioner vide termination order dated 03.11.2017 (Annexure P-11). It is challenging the said termination order, that the present petition has been filed by the petitioner.

Arguing the case, learned counsel for the petitioner has submitted that the petitioner had applied for the post of Assistant Professor. For the said post, as per the prescribed essential qualifications, there was no requirement of publication of research papers. Not only that, even a person whose Ph.D. thesis has not yet been accepted was made eligible under the advertisement though on consolidated salary. Therefore, the respondents could not have insisted upon the publication of the research papers so as to visit the petitioner with adverse consequences of the extreme degree, like termination of his service. Moreover, the petitioner had clearly mentioned in his application form itself that although he had written the research papers and had submitted the same to an appropriate Journal, however, the said research papers were yet not published by them. Rather, the research papers were under the Journal review. Therefore, the respondents were clearly told about the

status of the research papers which were claimed by the petitioner. The counsel has further submitted that the respondent-Institute had given one year time to the petitioner to get the said research papers published, however, even before that the respondents have shown extreme hurry to arrive at a decision against the petitioner. Had the respondents stuck to the letter issued by themselves, the petitioner would have got the research papers published as well. Therefore, the petitioner has been treated totally unfairly and in an illegal manner. Hence, the impugned order deserves to be set aside and the petitioner deserves to be reinstated into service.

On the other hand, learned counsel for the respondents has submitted that no doubt the qualification prescribed for the post of Assistant Professor was Ph.D. and even the person whose Ph.D. Degree was yet to be approved was eligible for the said post, however, the application form did require the candidates to fill up the number of research publications in the columns meant for the same. This qualification was so mandatory that unless a candidate filled up the said column, his application was not to be accepted online at all. Therefore, publication of research papers was one of the essential qualifications. Since, the petitioner did not have the requisite qualifications, therefore, his service has rightly been terminated. The counsel has further submitted that the column of publications required the candidate to fill up the research publications in order of the date of their publication. Although the petitioner was not having any publications as such, still, he filled up the application form, though by writing word “under review”. However, this was only a mis-representation on the part of the petitioner just to get his application form uploaded. This has misled the selectors. The

petitioner was required to mention only those papers which were already published, and not those which were still under review. Therefore, on finding the fact that his research papers were not published, his appointment has rightly been terminated. Proceeding further, learned counsel has also submitted that the appointment in question was only a contractual appointment and for a specified period of three years starting from 09.05.2017. As of today, the petitioner does not have any kind of right to get on the job again. Hence, the present petition deserves to be dismissed.

Having heard the counsel for the parties, this Court finds substance in the arguments raised by the counsel for the petitioner, though in part. The petitioner is very much right in submitting that the prescribed qualifications nowhere required any publication of research papers as such. Not only that, even the candidate whose Ph.D. degree had not yet been approved were made eligible. Therefore, the action of the respondents is based on a non-essential fact which was not relevant as such for the process of selection. The assertion of the counsel for the respondents that had the petitioner not filled up the column of research papers, then his application form would not have been accepted, shows only the non-application of mind by the respondents. Once they have prescribed the qualifications of even un-approved and un-published Ph.D. thesis, then it was not legally tenable on their part to create a mechanism which blocked the application form of such candidates whose research papers were not yet published. The petitioner could not be put to disadvantage for the fault or deficiency of the respondents. It is not even in dispute that the petitioner fulfills the other prescribed essential

educational qualifications. Therefore, his selection was rightly made by the respondents.

One thing more, which supports the case of the petitioner is that the counsel for the respondents has not been able to point out that the petitioner was granted any advantage in selection process on the basis of the said research papers, which though written by the petitioner, but were under review for publication. There is nothing in the advertisement or reflected from the process of selection that any such benefit had flowed to the petitioner in the process of selection.

Furthermore, the respondents themselves were sanguine of the fact that the publications of research papers were not an essential qualification. This is clear from the fact that they themselves had granted one year time to the petitioner to complete the process of publication. But surprisingly even before completion of the said period of one year, the respondents had taken decision to terminate the service of the petitioner. This course of action adopted by the respondents indicates existence of some consideration other than the prescribed qualifications or the merit of the petitioner, as such, being the real reason for termination of service of the petitioner. However, any such consideration is not clearly reflected from the record of the case.

However, this Court finds also substance in the argument raised by the counsel for the respondents that the appointment was only on contract basis and for a limited period. This fact is not even disputed by the counsel for the petitioner. In that situation, the contract of service cannot be specifically enforced against the respondents. This has been so held by the Constitutional Bench judgment of the Supreme Court

rendered in the case of **Executive Committee of Vaish Degree College, Shamli and others Versus Lakshmi Narain and others, AIR 1976 SC 888**. In such a situation, at the best, the petitioner can only be compensated with the salary for the notice period which the respondents were bound to give to the petitioner for termination of the contract. It is not even in dispute that the notice period prescribed under the terms of appointment was three months. Therefore, although the petitioner cannot be reinstated into the service, however, he has to be awarded compensation equivalent to the salary for the period of three months'; at the rate of the wages last drawn by him.

In view of the above, the present petition is partly allowed. The order passed by the respondents, terminating the service of the petitioner, is held to be non-sustainable. However, the petitioner is granted relief of payment of compensation equivalent to the amount of wages for three months' at the rate of last salary drawn by him.

The pending miscellaneous application, if any, is also disposed of as such.

18th NOVEMBER, 2022
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(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned:

Yes

Whether Reportable:

Yes