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

CWP-19686 of 2018

Date of decision : 21.11.2022

Dr. Namrita Kalia

... Petitioner

Versus

Dr. B.R. Ambedkar National Institute of Technology, Jalandhar and others

.. Respondents

CORAM :HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present:- Mr. Vivek Salathia, Advocate for the petitioner.

Mr. Vivek Singla, Advocate for respondents No.1 and 2.

Mr. Sudershan Kumar, Advocate for respondent No.3.

Anupinder Singh Grewal, J. (Oral)

The petitioner has challenged the selection process initiated pursuant to advertisement No.9/2017 (Annexure P-6). She has sought further direction to permit the petitioner to continue as Assistant Professor (on contract) till the regular selection is made by the respondent-Institute.

2. Learned counsel for the petitioner submits that the petitioner had been appointed as Assistant Professor on contract basis on 17.07.2015 and had continued to work till August, 2018. The respondents could not have replaced her with another Assistant Professor appointed on contractual basis. The appointment of respondent No.3 as Assistant Professor (on contract) is vitiated in law. He further submits that in the impugned advertisement, the

nomenclature of the post was Assistant Professor (on contract) but later the respondents are trying to convert this appointment to a regular appointment. This had been done on 27.10.2017 after the initiation of the selection process. The last date for preferring the applications was 10.10.2017. It has limited the field as candidates, who would have applied if the post had been mentioned as regular, could not apply. The change had neither been notified nor put in public domain. The appointment letter issued to respondent No.3 also mentioned 'on contract'. In support of his submissions, learned counsel has relied upon the judgment of the Supreme Court in the case of **K. Manjusree versus State of Andhra Pradesh and another, (2008) 3 SCC 512**. He also submitted that Schedule 'E' of the First Statutes of the National Institutes of Technology (Amendment) Statues Act, 2017 (for short, 'the Statutes, 2017') the post has been prescribed as Assistant Professor (on contract) in Pay Band-III with Grade Pay of Rs.6,000/-. The respondents, through instructions, cannot make the regular employment contrary to the Statues. The Statue had not been amended and therefore, as per the notification dated 27.10.2017, the respondents seeking to fill the post on regular basis would be contrary to law. He has also relied upon the judgments in the cases of **B.S. Minhas versus Indian Statistical Institute and others, AIR 1984 SC 363, Union of India and others versus N. Hargopal and others, 1987(3) SCC 308, Dr. (Major) Meeta Sahai versus State of Bihar and others, 2019(20) SCC 17, Union of India and others versus Ashok Kumar Aggarwal, 2013(16) SCC 147, Hargurpratap Singh versus State of Punjab and others, 2007 (13) SCC 292** and the judgment of this Court in the case of **Daljit Kaur and others versus State of Punjab and**

others, bearing CWP No.3363 of 2021, decided on 08.11.2021, in support of his submissions.

3. *Per contra*, learned counsel for the respondents submitted that the petitioner had been appointed as Assistant Professor on contractual basis at a consolidated salary of Rs.45,000/- per month in pursuance to a walk-in-interview conducted by an ad-hoc selection committee. She had participated in the selection process initiated in light of impugned advertisement but after failing to secure the position in the merit for selection, she had turned around and challenged the impugned advertisement which is impermissible in view of the judgments of the Supreme Court in the case of **Ramesh Chandra Shah and others versus Anil Joshi and others, 2013(11) SCC 309** and **Dr. Rajasri Bhattacharaya versus Central Administrative Tribunal, Sector 17, Chandigarh, 2018(1) SCT 752**. The petitioner herself was aware that the impugned advertisement has been published for a post on regular basis and had participated in the selection process. Respondent No.3 was a meritorious candidate and had secured 39.5 marks against 36 marks secured by the petitioner. The post which had been advertised initially was Assistant Professor (on contract) Pay Band-III with grade pay of Rs.6,000/-. In terms of the letter issued by the Ministry of Human Resource Development, Govt. of India dated 27.10.2017, the nomenclature of the advertised post was changed from Assistant Professor (on contract) to Assistant Professor Grade-II without any other change in the terms and conditions of appointment. This was only to clarify the ambiguity which had arisen on account of the nomenclature. The selection had been carried out by a regular selection committee consisting of

five members constituted in terms of Section 23 of the Statutes, 2017.

4. Heard.

5. The petitioner had been appointed as Assistant Professor on contractual basis at a consolidated salary of Rs.45,000/- in response to a walk-in-interview held on 07.07.2015 by an ad-hoc selection committee. Her initial appointment was for a period of six months and was renewed periodically till 2018. The respondents had, thereafter, issued the impugned advertisement (Annexure P-6) in September, 2017 for filling up the posts of Assistant Professor (on contract) in the Pay Band-III with Grade Pay of Rs.6000/-. The relevant extract of the impugned advertisement is reproduced hereunder:-

Advt. No.	Name of the post	Category					Total
		Open	SC	ST	OBC	PWD	
09/2017	Assistant Professor (on contract) Pay Band-3 with Grade Pay of Rs.6000/-	32	08	06	21	01 (SC)	68

It was also set out in the advertisement that:-

“Detailed education qualification, experience and other criteria for selection shall be as per the Schedule E of the First Statues of the NIT (Amendment Statues, 2017) (Ref. Gazette of India dated July 24, 2017).”

6. The relevant extract of designation, pay scale, qualification, etc., of the post stipulated in Schedule 'E' of the Statutes, 2017 is reproduced

hereunder:-

Sr. No.	Designation, Pay Band and Academic Grade Pay	Essential Qualification	Essential Requirements	Cumulative Essential Credit Points
1.	Assistant Professor (On contract) Pay Band-3 with Grade Pay of Rs.6000	Ph.D.	Nil	Nil
2.	Assistant Professor (On contract) Pay Band-3 with Grade Pay of Rs.7000	Ph.D.	One year post Ph.D. Experience of teaching and Research in Institution of repute or Industry	10

7. The nomenclature of Assistant Professor (on contract) had been used but subsequently, the clarification received from the Ministry of Human Resource Development dated 27.10.2017 had specified that the post would be Assistant Professor Grade-II in Annual Grade Pay of Rs.6,000/-. The relevant extract of the notification/clarification dated 27.10.2017 is reproduced hereunder:-

“1(b) The nomenclature of Assistant Professors (contractual) is changed into Assistant Professor Grade-II (presently in AGP 6,000/- and AGP 7,000/-) and Assistant Professor (presently in AGP 8,000/- and AGP 9,000/-). There shall be no change in the terms and conditions of appointment or nature of appointment as done earlier as per MHRD letter No.23-01/2008-TS-II dated 18.08.2009 read with 16.09.2009. Institutes should put in place a process or discontinuation of non-performers. The initial pay for Assistant Professor Grade-II (level 10) be mapped to cell no.8 of the Annexure-I i.e. Rs.70,900/- instead of the 7 non-compounded increments.”

8. The appointment letter issued to respondent No.3 also stipulates that he shall be on probation for a period of one year from the date of joining duty which is in consonance with General Instructions-19 of the impugned advertisement which provides that “the selected candidates on regular position will be under probation and will be confirmed subject to satisfactory completion of the probation and other requirements as per Institute Rules”.

9. It is thus manifest that the respondents had sought to fill the post of Assistant Professor on a regular basis while the petitioner had been appointed on contract basis at consolidated salary in pursuance to a walk-in-interview by an *ad hoc* selection committee.

10. Therefore, I do not find any merit in the contention of the counsel for the petitioner that as the nomenclature of the post was initially described as Assistant Professor (on contract) in Pay Band-III with Grade Pay of Rs.6,000/- and it could not have been later changed to Assistant Professor Grade-II with AGP of Rs.6,000/-. The petitioner had herself participated in the selection and only after she had not been successful, she had turned around and challenged the advertisement. Undoubtedly, respondent No.3 is a meritorious candidate having secured 39.5 marks against 36 marks secured by the petitioner. The selection to the post of Assistant Professor (on contract) in Pay Band-III with Grade Pay of Rs.6,000/- in terms of the impugned advertisement had been carried out by a five member committee as stipulated in Section 23 of the Statutes, 2017. The relevant extract of Section 23 of the Statutes, 2017, is reproduced hereunder:-

“Statute 23 APPOINTMENTS”

(5) (a) The qualification and other terms and conditions of appointment of Academic Staff (excluding Director) or promotion shall be as specified in Schedule 'E' and the Selection Committee for making recommendations for appointment of Academic Staff (excluding Director) shall consist of the following members, namely:-

- | | | |
|--|---|----------|
| (1) Director or Deputy Director | - | Chairman |
| (2) Visitor's Nominee | - | Member |
| (3) two nominee of the Board one being an expert, but other than a member of the Board | - | Member |
| (4) one expert nominee of Senate from outside of the Institute | - | Member |
| (5) Head of the Department concerned (for other than the post of Deputy Director and Professor)" | - | Member |

11. No other prospective candidate has come forward to challenge the advertisement and selection process on the ground that he/she did not apply for the post as it was sought to be filled on contractual basis but had the post been advertised to be filled up on regular basis, he/she may have applied.

12. The judgments relied upon by the petitioner are distinguishable on the facts as in the case of **K. Manjusree versus State of Andhra Pradesh and another (supra)**, it had been held that the rules of the game cannot be changed after the commencement of selection process, but in the case at hand, the clarification with regard to the nomenclature of the post had been carried out while the criteria set out for the selection process remained unchanged.

13. In the case of **B.S. Minhas versus Indian Statistical Institute**

and others(supra), it had been held that any regular appointment to a post under the State or Union without issuing an advertisement and without holding a proper selection where all the eligible candidate get a fair chance to compete, would violate Article 16 of the Constitution of India while in the instant case, the posts were advertised and due selection process was carried out.

14. In **Union of India and others versus N. Hargopal and others (supra)**, it was held that as the vacancies were filled up by considering the candidates sponsored by the Employment Exchange, there is no violation of Articles 14 and 16 of the Constitution of India. In the instant case, the advertisement had been issued to the public at large and in pursuance thereto, the petitioner and other eligible candidates had applied.

15. It had been held by the Supreme Court in the case of **Union of India and others versus Ashok Kumar Aggarwal (supra)** that an authority cannot issue orders/office memorandum/executive instructions in contravention of the statutory rules. The instructions can be issued only to supplement the statutory rules not to supplant it. In the instant case, the clarification issued by the respondents cannot be said to be contrary to the Statute.

16. In **Dr. (Major) Meeta Sahai versus State of Bihar and others (supra)**, the Supreme Court had held that in exception to the Rule of 'Plea of estoppel', where there is misconstruction of statutory rules and discriminatory consequences arise therefrom, a candidate can challenge selection process. However, in the case at hand, the clarification is not in derogation of the statutory rules and there is no change in the selection criteria. The petitioner, after failing to get selected to the post on merit, has now challenged the

advertisement as well as the selection process.

17. In the case of **Hargurpratap Singh versus State of Punjab and others (supra)**, it was held that *ad hoc* appointees are not entitled to regularization and would continue on the posts till regular incumbents join. It was further held that the contractual employees cannot be replaced by another set of contractual employees. In the instant case, the petitioner had been employed on contractual basis while respondent No.3 had been selected on regular basis in pursuance to the impugned advertisement wherein the petitioner had also applied and was considered.

18. In the case of **Daljit Kaur and others versus State of Punjab and others (supra)**, it was held that the criteria of selection had been changed with regard to additional marks for educational qualification. It was contrary to the provisions of the Rules, as the selection had to be made in terms of merit in the written examination as specified in Rule 6(4) of the Punjab State Elementary Education (Teaching Cadre) Group C Service Rules, 2018. It is reiterated in the case at hand that there is no change in the selection criteria and only nomenclature of the post has been changed in consonance with the instructions issued by the Ministry of Human Resource Development.

19. In the result, the petition being devoid of merit stands dismissed.

(ANUPINDER SINGH GREWAL)
JUDGE

21.11.2022

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Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No