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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CONT.CAS(C) 348/2023 & CM 13402/2023**  
**SWATI SHARMA**

..... Petitioner

Through: Mr Pankaj Kumar, Mr Munawar Waseem, Mr Sandeep Kumar Singh, Mr Sidharth, Mr Shubhendu Saxena, Mr Atul Agnihotri, Advocates.

versus

**ASHWANI KUMAR KANSAL**

..... Respondent

Through: Mr Shivendra Singh, Mr Bikram Dwivedi, Advocates.

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Reserved on: 20<sup>th</sup> March, 2023

Date of Decision: 3<sup>rd</sup> July, 2023

**CORAM:**

**HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA**

### **J U D G M E N T**

#### **MANMEET PRITAM SINGH ARORA, J:**

1. The present petition has been filed alleging that the Respondent has wilfully disobeyed the order dated 07.04.2022 passed by the Coordinate Bench of this Court in W.P.(C) 5397/2022 ('writ petition'), whereby, the Respondent was directed to continue with the services of the Petitioner and it was directed as and when the Respondent decides to fill the posts of Technical Assistants ('TAs') through open selection, the original petitioners were to be given the benefit of age relaxation and certain marks for completing each year of engagement with the Respondent.

1.1. It is stated that the Petitioner's representation dated 30.01.2023 made against the termination order dated 01.12.2022 has not been responded to till date.



2. The learned counsel for the Petitioner states that there were twenty-six (26) petitioners in the writ petition, however, the Respondent after the passing of this Court's order dated 07.04.2022 have selectively not extended the appointment of some of the original petitioners, including the Petitioner herein.

2.1. He states that the Petitioner's services have been discontinued *vide* termination order dated 01.12.2022, which is in violation of this Court's order dated 07.04.2022.

2.2. He states that the non-renewal/termination of the services of the Petitioner is a wilful and deliberate act of disobedience.

3. In response, the learned counsel for the Respondent states that the services of the Petitioner have been discontinued as the regular incumbent has joined the University i.e., Guru Nanak Dev, Delhi Skill and Entrepreneurship University at Rohini Campus, Sector 15-A, Rohini, Delhi. In this regard, he relies upon the office order dated 01.12.2022, filed as Annexure P-5 to the present petition.

3.1. He states that the selection and recruitment process is not carried out by the Delhi Skill and Entrepreneurship University ('DSEU') but it is carried out by the parent department i.e., the Directorate of Training and Technical Education ('DTTE'). He states that DTTE has not been made party to the present contempt petition.

3.2. He states that the continuation or extension of all the TAs, who were appointed on a contractual basis, was subject to the appointment of regular incumbent through direct recruitment.

3.3. He states that since the direct recruit has been appointed, the Petitioner's contractual services have been rightly terminated. He states that



this is also in conformity with the terms and conditions of the TAs appointed on a contractual basis.

3.4. He states that extension of time given to the TAs, appointed on contractual basis was expressly subject to the position being filed by direct recruitment. In this regard, he relies upon the contents of the office order dated 06.09.2022.

3.5. He states that there has been no breach of this Court's order dated 07.04.2022 and the present petition is not maintainable.

4. This Court has considered the submissions of the parties and is unable to accept the contentions of the Petitioner.

5. The original petitioners in the writ petition had sought a substantive relief to the effect that they are entitled to absorption and regularisation from the date of the filing of the petition. The Coordinate Bench after recording the facts of the case categorically opined that since the original petitioners were appointed on a contractual basis, upon their failure to apply for regular selection, the writ petition itself deserved to be dismissed. The Court further held that their claim for regularisation is not maintainable. The relevant paragraph of the judgment dated 07.04.2022 reads as under:

"10. Having heard the learned counsel for the parties, it is conceded by Mr. Kumar that the initial selection was through the process of walk-in-interview and the appointment of the petitioners was on a contractual basis with a clear stipulation in their appointment letters that the appointment shall be for a period of six months or till formulation of personnel policy/regular recruitment through DSSSB whichever is earlier.

11. He also conceded that the respondents have issued the advertisement for making regular appointments to which admittedly the petitioners have not applied. This inaction on the part of the petitioners, not to apply for regular selection, is itself enough for this Court to dismiss the petition.

12. This I say so, in view of the fact that the petitioners are aware of the fact that their appointment is contractual till the regular recruitment takes place.



*They were required to apply against the advertised posts. Having not done that they have lost an opportunity of getting themselves regularly appointed in the respondent No.2, University.*

*13. That apart, the petitioners having failed to apply through the process of regular selection cannot claim regularisation on the strength of their appointment in the years 2009-12 only on the ground that they have worked for 10-13 years.*

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*16. It is also a settled position of law that regularisation/absorption is not a mode of appointment [ref: **Nagar Mahapalika v. Vibha Shukla, (2007) 15 SCC 161**]. This I say so because the issuance of an advertisement shall attract talent and regularising/absorbing the petitioners without considering all eligible persons through a process open to the public shall violate Article 14 which shall be inconsistent with the law laid down by the Supreme Court in the **Uma Devi (supra)**. ”*

(Emphasis Supplied)

6. The Court, therefore, expressly declined the relief of absorption and regularisation as prayed for by the petitioners in the said writ petition. However, the Court after taking note of the decision of the Supreme Court in **University of Delhi & Ors. v. Delhi University Contract Employees Union & Ors., Civil Appeal No. 1007/2021 and 1008/2021**, which was decided on 25.03.2021, issued a limited direction to the Respondents, therein to grant the benefit of age relaxation and each completed year of engagement by awarding certain marks, upto a ceiling limit so that the petitioners have some advantage over the outsiders. The direction which is contained in the operative portion of the judgment dated 07.04.2022 reads as under:

*“19. So it follows in view of the above judgment of the Supreme Court that the services of the petitioners are being continued and also the fact that the vacancies are existing for the post of Technical Assistant, as and when the respondent, University, decides to fill the posts through open selection, the petitioners shall also apply against the same but in their case, they shall have the benefit of age relaxation to the extent they have worked with the respondents and the benefit of each completed year of engagement with the respondents is given in their favour at the time of selection like awarding*



certain marks, up to a ceiling limit so that they may have some advantage but not an undue advantage over the outsiders. This shall be in conformity with the law laid down by the Supreme Court as noted above and also Article 14 of the Constitution of India.”

(Emphasis Supplied)

7. It is a matter of record that after the passing of the order dated 07.04.2022 in W.P.(C) 5397/2022, the Respondent *vide* office order dated 06.09.2022 had extended the services of the Petitioner herein until 06.12.2022; however, thereafter the services have not been continued. The relevant extract of the office order dated 06.09.2022 reads as under:

“The services of the following staff members are hereby extended from 07th September, 2022 till 06th December 2022 or till the post is filled on regular basis through Direct Recruitment/Promotion/Deputation, whichever is earlier on the terms and conditions as it was/were for last contract with respective modification in terms of financial obligation(s):”

(Emphasis Supplied)

8. The contents of the office order dated 06.09.2022 are clear and unequivocal. The subsequent office order dated 01.12.2022 records that the regular incumbent has joined in place of the Petitioner herein and therefore, the services of the Petitioner have been discontinued. Thus, on a conjoint reading of the office orders dated 06.09.2022 and 01.12.2022, this Court finds merit in the submission of the Respondent that the discontinuation of the Petitioner’s services is not in violation of the order dated 07.04.2022 passed by this Court.

9. In substance, the Petitioner is only aggrieved by the termination of her contractual services. It was enquired from the learned counsel for the Respondent if a substantive writ petition has been filed challenging the termination. He fairly conceded that no writ petition has been filed challenging the discontinuation of the services.



10. In these facts and circumstances, this Court is unable to conclude that the action of the Respondent in discontinuing with the contractual services of the Petitioner, upon appointment of a regular incumbent through direct recruitment, is in wilful disobedience of the order dated 07.04.2022. Even otherwise contempt is a matter between the Court and the contemnor; and this Court is unable to conclude that there is any wilful, deliberate violation of the order dated 07.04.2022. This petition is accordingly dismissed and the pending applications, if any, are disposed of as infructuous.

11. It is clarified that, in case, the Petitioner challenges the discontinuation/termination of her services before an appropriate authority, the present dismissal will not prejudice her case in as much as this Court has not examined the merits of the grounds of discontinuation. The examination in the present order is limited to the prism of contempt. No order as to costs.

**MANMEET PRITAM SINGH ARORA, J**

**JULY 03, 2023/asb**

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