



2023:DHC:9443



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

% **Date of order: 7th December, 2023**

+ **W.P.(C) 1968/2019**

PRADEEP PANCHAL

..... Petitioner

Through: In person

versus

**MANAGEMENT OF H.M.D.A.V SENIOR SECONDARY PUBLIC
SCHOOL AND ANR.**

..... Respondents

Through: Mr. Yatendra Sharma, Advocate for
R-1

Mr. Yeeshu Jain, ASC with Ms.
Manisha and Mr. Hitanshu Mishra,
Advocates for R-2

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant writ petition under Article 226 of the Constitution of India has been filed on behalf of petitioner seeking the following reliefs:-

"1. Directing the respondent no.1 to treat the present Petitioner as a permanent absorbed employee of the school at the post of PGT Computer Science from year 2013 along with all the salary, arrears, seniority etc and quash the advertisement issued by the respondent no. 1 calling for candidates for post of PGT computer Science.

2. Directing the Respondent No.1 to release the salary as per



the pay scale available to the similarly situated Govt teachers and arrears from the date of joining till the date of last day of service.

3. Staying the process of interview and recruitment to be conducted by the respondent No. 1 for the post of PGT, Computer Science till the disposal of this petition.

4. Directing the Respondent No.1 to issue the experience certificate for the period of services rendered by the Petitioner.

5. Any other relief this Hon'ble Tribunal may feel pleased to issue in the interests of justice."

2. The brief facts necessary for the adjudication of the instant petition have been reproduced herein:

- a) The petitioner has been employed with H.M.D.A.V Senior Secondary Public School since 1st February, 2013 at the post of PGT Computer Science.
- b) Respondent no.1 is the management of HMDAV Senior. Secondary School, Darya Ganj, Delhi, which is aided by the Delhi Government and is regulated by the Delhi Government guidelines.
- c) In November, 2012 the respondent no.1 invited applications for the permanent post of PGT, Computer Science and in view of the same, the petitioner applied for the said post.
- d) Subsequently, the petitioner was shortlisted for the interview round, which was conducted between the period of December, 2012 and January, 2013. The interview panel consisted of the chairman of the respondent no.1 along with 4-5 other members



of the selection panel, including the subject experts.

- e) Subsequent to the conduction of interview, the petitioner was appointed to the post of PGT Computer Science on a probationary basis for 2 years, with guaranteed absorption into permanent faculty upon satisfactory completion of the aforesaid probation period. However, the same terms were never reproduced into a written agreement.
- f) Thereafter, the petitioner made several representations and requests to the respondent no.1, thereby, seeking enhancement in pay and arrears, however, the respondent no.1 issued a new advertisement for the post of PGT, Computer Science.
- g) Subsequently, the petitioner sought parity in pay and the arrears, however, the petitioner was allegedly threatened to be removed from the services of the school. Further, the petitioner sought a 'certificate of experience' for the six years of services that were rendered by him, as the same would make the petitioner eligible to apply for the permanent post as published in the advertisement issued by the respondent no.1.
- h) Thereafter, in the year 2018, the petitioner made several requests seeking parity in pay, yet, the petitioner was asked to wait for the same, which ultimately led to the petitioner exceeding the age limit of 30 years to apply for the said post.
- i) Aggrieved by the denial of the experience certificate, which would have made the petitioner eligible for the post of



permanent PGT, the petitioner has preferred the present petition.

3. Learned counsel appearing on behalf of the petitioner submitted that the petitioner had been selected for the post of PGT Computer Science from a pool of candidates while possessing all the necessary qualifications including the prescribed age limit of 30 years as on the day of appointment.

4. It is submitted that the the petitioner's rights under Articles 14, 19, and 21 of the Constitution of India protects him against any arbitrary treatment and discriminatory practices. Despite fulfilling criteria and excelling in performance, the petitioner faced prolonged uncertainty with regard to the regularization of employment which was promised by respondent no. 1.

5. It is submitted that relying on assurances of absorption by the respondent no. 1 as outlined in the employment agreement, the petitioner legitimately expected permanent status after a two-year probation which ended in early 2015, which was further extend to one year, however the same was based on false pretexts..

6. It is submitted that the petitioner was compelled to relinquish rightful claims for pay parity and salary arrears comparable to other government school teachers in identical positions, however, the petitioner's claims were left unaddressed by the respondent no.1.

7. It is submitted that Rule 105 of the Delhi School Education Rules, 1973,(hereinafter "Rules") specifies permanent employment following a probation period, typically of one year unless extended and given the petitioner's extensive six-year tenure, the respondent no.1 has significantly



surpassed the probation period, thereby, warranting the petitioner's permanent status.

8. It is submitted that even though the petitioner was appointed as per the Rules, an advertisement for the post of PGT Computer Science was published, amounting to indirect removal of the petitioner, and the same is in contravention with the due procedure so established by the Rules.

9. It is submitted that the respondent no.1 attempted to bypass the law by engaging in transactions and actions that were deceitful, thereby attempting to portray the petitioner as a contractual/part-time employee with the aim to prevent the petitioner from benefiting from the regularization scheme outlined in the Delhi School Education Act,1973 (hereinafter "Act") and the Rules.

10. It is further submitted that the denial of equal pay to equal work is in strict contradictions to the tenets of the Constitution of India Part III and Part IV, where pay parity is elevated to the level of fundamental rights. Additionally, Section 92 of the Delhi School Education Act, 1973 mandates the parity of salary between guest faculty and others at the same rank and non-compliance of the same would tantamount to the School losing its grant from the State.Despite receiving grants, respondent no. 1 deliberately pays significantly lower salary, directly violating statutory laws.

11. It is submitted that the Act and the Rules have been established in order to protect the employees from private managements' arbitrary decisions, especially those with significant government grants. Terming repeated employments as fixed or contractual, with artificial breaks,



breaches statutory norms.

12. It is submitted that the petitioner is well-qualified for the position, possesses all necessary qualifications along-with six years of teaching experience at the age of thirty-five, considering the scheme allows age rebates based on experience, the petitioner falls within the permissible age limit of 30 years.

13. It is submitted that the petitioner started as a permanent employee in the year 2013, at the school and has not been engaged in any further contracts with respondent no. 1 since. The petitioner has been an active employee in all school related activities and even though no formal contract was entered between the petitioner and the respondent no. 1, they refer the petitioner as a Part Time employee as visible from the RTI replies of respondent no. 2.

14. It is submitted that the respondent no. 1 constituted a Department Promotion Committee (DPC), to assess the case of petitioner and the result of the same was never published which is violative of basic principles of natural justice.

15. It is submitted that the actions of the respondent no. 1 which led to dismissal of the petitioner which is clearly prohibited by Section 8 of the Delhi School Education Act, 1973, also violates Rule 120 of the Delhi School Education Rules, 1973 which clearly state that an employee cannot be terminated or subjected to major penalties without a proper departmental inquiry. Despite six years of service, the petitioner was unlawfully removed without any due process.



16. It is submitted that the salary of a highest grade teacher in a government school is twice the salary of a lowest grade teacher in the school managed by respondent no. 1. Moreover, since the respondent no.1 is being granted a grant of 95% from the respondent no. 2, it is duty-bound to uplift qualified teachers from social constraints by offering salaries aligned with standards as established by the respondent no. 2

17. It is submitted that the respondent no. 1 has acted unlawfully by denying the petitioner the 'Experience Certificate' as the same would have enabled him to apply for the permanent PGT Computer Science post. Furthermore, the non-grant of the said certificate will make it very difficult for the petitioner to explain the gap years, hindering his ability to apply for other teaching positions.

18. It is submitted that respondent no. 1 has consistently ignored the petitioner's numerous representations and have refused to act upon them. The most recent instance was in August, 2018, when the petitioner requested respondent no. 1 to honor their promises. However, there has been no response from respondent No. 1 till date.

19. It is further submitted that the petitioner, having six years of work experience and meeting all prescribed qualifications, is entitled to regularization in the post.

20. It is submitted that as on the initial recruitment date, the petitioner was comfortably within the age limit prescribed by the respondent no. 2, i.e., 30 years. Once a selection is made following the due process, no subsequent event can invalidate it.



21. It is submitted that the submissions made by the respondent no. 1 that the petitioner was already communicated that his appointment was temporary arrangement for a part time teaching is false and denied. It was never communicated to the petitioner that his appointment was merely a temporary arrangement.

22. In view of the foregoing submissions, it is prayed that the instant petition may be allowed.

23. *Per contra*, learned counsel appearing on behalf of the respondent no. 1 vehemently opposed the instant petition, submitting to the effect that the petitioner has approached the Court with false allegations and concealed facts involving the unauthorised acquisition of official documents, scanned through a mobile phone without school authorities' knowledge.

24. It is submitted that the aforesaid allegations also suggest that the petitioner received over-payments through misrepresentation, prompting the School to initiate proceedings. The instant petition appears to be motivated by the intention to evade consequences of alleged misconduct, thereby warranting dismissal.

25. It is submitted that the Directorate of Education (hereinafter "DoE") managed computer labs and faculty from the year 2005 to 2010, after which the said labs and faculties were withdrawn. The school continued the computer lab in the year 2011, due to the students' interest.

26. It is submitted that the school administration clearly informed the petitioner that no sanctioned Computer Teacher post existed.

27. It is submitted that two teachers were previously employed at the



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school, however one of them left on 30th January 2013, as it was mid-session, ahead of impending board examinations in March 2013, and to ensure students' academic progress, a decision was made to engage a private tutor. Accordingly, the appointment of Mr. Pradeep Panchal was done w.e.f. 1st January 2013.

28. It is submitted that the PGT Computer Science position was sanctioned by the Directorate of Education, GNCT of Delhi in the Post Fixation of 2014-15. However, by 3rd August 2013, the petitioner had already exceeded the maximum age requirement for the post.

29. It is submitted that the Competent Authority, the Director of Education, GNCT of Delhi, issued the clearance to fill the PGT Computer Science post on 19th June 2018 vide Order No. 361. Subsequently, the advertisement approval vide Order No. 535 was granted by the Directorate of Education on 1st August 2018, followed by the publication of the advertisement in national newspapers on 26th August 2018. However, when the petitioner applied on 10th September 2018, he was already over the specified age limit for the post.

30. It is submitted that the school compiled a comprehensive merit list, considering all applicants, including the petitioner, direct applicants, and candidates from the Employment Exchange, for the PGT Computer Science post. However, the petitioner's name appeared at Sr No. 53, and beyond the age limit specified for the Lecturer Computer Science post, which stands at 30 years. Moreover, under Rule 96 of the Rules, there is no provision for absorbing part-time, contractual, or temporary employees.



31. It is submitted that Rule 47 of the Rules, 1973 allows only surplus employees from recognized aided schools to be absorbed after a specific tenure. Rule 108, mandates filling vacancies through promotion or direct recruitment, as per the Administrator's regulations. Moreover, there was no sanctioned post for Computer Science during the petitioner's service in the year 2013.

32. It is submitted that the petitioner's claim regarding his appointment as a permanent PGT (Computer Science) faculty member, employment terms, and emoluments matching government teachers are unfounded and misleading since these assertions lack evidence and are disputed facts inappropriate for resolution in a writ proceeding.

33. It is submitted that such matters should be addressed through the appropriate civil remedies, specifically before the Delhi School Education Tribunal. The respondent has no records supporting the petitioner's allegations, as neither the petitioner was appointed on a sanctioned post nor there was issuance of an appointment letter.

34. It is submitted that the petitioner's engagement in a private recognized school follows the guidelines outlined in Rule 96 of the Delhi School Education Rules 1973, which necessitates the participation of the Director of Education's nominees in the Staff Selection Committee. However, no such procedure was followed in the petitioner's case, rendering their engagement not an official appointment under the law.

35. It is further submitted that if the petitioner had genuine concerns about malpractice or breach of assurance regarding the PGT (Computer Science)



post, they should've acted promptly rather than being part of any alleged malpractice. Notably, the petitioner hasn't lodged any complaints about malpractices or assurance breaches since the year 2013, indicating satisfaction with his contractual employment and monthly salary. Therefore, the present writ petition lacks merit and should be dismissed.

36. It is submitted that the current writ petition ought to be dismissed since the petitioner seeks regularisation as a PGT (Computer Science) with the respondent school. Granting such relief isn't feasible as it contradicts the legal stance established by the Hon'ble Supreme Court in the judgment pronounced in the case titled *State of Karnataka v. Umadevi (3), (2006) 4 SCC 1*, prohibiting backdoor entry into permanent employment.

37. It is submitted that the instant writ petition should be dismissed since the petitioner has failed to provide a copy of his appointment letter, crucial for a fair resolution of this case. Despite the petitioner's claim in the petition, the mere possession of BCA and MCA degrees does not automatically qualify the petitioner for permanent employment as a PGT (Computer Science).

38. It is submitted that the petitioner seems to have been employed by the respondent school as a PGT (Computer Science) on a purely contractual basis as is evident from the attached salary proof, provided in the petition. Moreover, there was no prior approval or sanction from the competent authority for hiring the petitioner on part-time basis.

39. It is submitted with regards to the experience certificate that the petitioner never raised a request for issuance of the same and hence there



remains no question with regards to denial of the experience certificate as sought by the petitioner.

40. In view of the foregoing submissions, it is prayed that the instant petition may be dismissed, being devoid of any merits.

41. Heard the counsel for the parties and perused the record.

42. It is the case of the petitioner that he was appointed to the post of PGT Computer Science on a probationary basis for 2 years, with guaranteed absorption into permanent faculty upon satisfactory completion of the aforesaid probation period, without the same being reproduced into a written agreement. It is contended that the petitioner made several representations, thereby, seeking parity in pay, however, there was no response at the hands of the respondents. It is further contended that the petitioner sought an experience certificate from the respondent no. 1, however, the same was declined by it. The petitioner has approached this Court in order to be appointed as a permanent faculty upon completion of two years of probation as well as to be granted the experience certificate so required by him in order to fulfill the criteria to be appointed as permanent faculty.

43. In rival contentions it is submitted that the petitioner's appointment was always on a temporary basis as is evident from the salary slip appended as Annexure P-3 to the instant petition. It is contended that the petitioner has not approached this Court with clean hands, thereby, misleading the Court with concocted facts. It is further contended that the petitioner has failed to provide an appointment letter which is a crucial determinant of the instant petition. It is also contended that the petitioner is seeking regularization at



the post of PGT Computer Science and the same is impermissible as per the ratio laid down by the Hon'ble Supreme Court in the judgment of *Uma Devi (Supra)*, whereby, back door entry into permanent employment is strictly prohibited.

44. In order to adjudicate the instant petition, it is imperative to analyse the salary slip appended as Annexure P-3 to the petition. The same has been reproduced hereunder:

FAIR TYPED COPY OF RELEVANT PORTIONS OF PAGE-2 OF
ANNEXURE P-3

S. NO	Name of Govt. Aided School	School ID	Name of Teachers	Laboratory
5.	HMDAV, SR. SEC SCHOOL, Darya Ganj	2127087	Sh. Pardeep Kr. (Part Time) Smt. Shrita Devi (Part Time)	YES

45. The salary slip as reproduced above, clearly demarcates the petitioner in the category of “part time”. Moreover, the petitioner has been unable to furnish any document that states the contrary. It has been alleged by the petitioner himself as well as by the respondents that the petitioner’s “guaranteed regularization” was never reproduced in a written form. Such evidence would be a crucial determinant of whether the petitioner was appointed on a part time basis or otherwise. The petitioner’s appointment is very clearly contractual in nature and it cannot be stated otherwise in view of the salary slipped reproduced above.



46. At this juncture, it is prudent to analyse the judgment in the case of ***Uma Devi (Supra)***, wherein the Hon'ble Supreme Court discussed back door entry into permanent employment at length. The relevant portions of the same are reproduced herein:

“43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for



absorption, regularisation, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as “litigious employment” in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

“44. The concept of “equal pay for equal work” is different from the concept of conferring permanency on those who have been appointed on ad hoc basis, temporary basis, or based on no process of selection as envisaged by the rules. This Court has in various decisions applied the principle of equal pay for equal work and has laid down the parameters for the application of that principle. The decisions are rested on the concept of equality enshrined in our Constitution in the light of the directive principles in that behalf. But the acceptance of that principle cannot lead to a position where the court could direct that appointments made without following the due procedure established by law, be deemed permanent or issue directions to treat them as permanent. Doing so, would be negation of the principle of equality of opportunity. The power to make an order as is necessary for doing complete justice in



any cause or matter pending before this Court, would not normally be used for giving the go-by to the procedure established by law in the matter of public employment. Take the situation arising in the cases before us from the State of Karnataka. Therein, after Dharwad decision [(1990) 2 SCC 396 : 1990 SCC (L&S) 274 : (1990) 12 ATC 902 : (1990) 1 SCR 544] the Government had issued repeated directions and mandatory orders that no temporary or ad hoc employment or engagement be given. Some of the authorities and departments had ignored those directions or defied those directions and had continued to give employment, specifically interdicted by the orders issued by the executive. Some of the appointing officers have even been punished for their defiance. It would not be just or proper to pass an order in exercise of jurisdiction under Article 226 or 32 of the Constitution or in exercise of power under Article 142 of the Constitution permitting those persons engaged, to be absorbed or to be made permanent, based on their appointments or engagements. Complete justice would be justice according to law and though it would be open to this Court to mould the relief, this Court would not grant a relief which would amount to perpetuating an illegality.

47. A bear reading of the aforesaid extracts makes it apposite that an individual appointed on a contractual basis cannot claim to be made permanent when the said contract comes to an end. A person employed temporarily cannot be made permanent at the expiry of their appointment. Moreover, the court cannot impede regular recruitment based on the requests of temporary or ad hoc employees whose employment has concluded or who lack inherent rights due to the nature of their appointment. High Courts, when adjudicating under Article 226 of the Constitution, should refrain from directing absorption, regularization, or permanent continuation unless the



initial recruitment adhered to constitutional principles. Mere continuity under a Court order, termed "litigious employment," doesn't confer the right to absorption or permanency. Issuing interim directions may be unwarranted, as it could disrupt regular selection processes or burden the state with unnecessary payments for surplus employees.

48. In the instant case, the petitioner was employed on a contractual basis to begin with and the same can be corroborated with the salary slip so attached with the petition. Since the nature of the petitioner's employment was contractual/temporary, the petitioner cannot claim to be made permanent on the basis of a guarantee that was never reproduced into a written form. Moreover, the petitioner was past the minimum age requirement for applying for the permanent post when the advertisement was published. The petitioner appears to be seeking parity in pay with that of other Government School teachers, however, the petitioner was never appointed on a permanent basis and remained to be a contractual employee during his tenure at the respondent school. Additionally, the petitioner has failed to bring on record any documents that would make this Court inclined to any other opinion.

49. This Court is of the view that in the instant matter, no such circumstances are being brought before this Court which warrants the interference of this Court. Hence, this Court cannot by way of issuance of a writ pass any direction in favour of the petitioner and against the respondent.

50. In light of the above facts and circumstance, it is held that there is no force in the contentions advanced by the petitioner and accordingly, the



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instant petition is dismissed being devoid any merits.

51. Pending applications, if any, also stand dismissed.

52. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

NOVEMBER 23, 2023

gs/ds/ryp

Click here to check corrigendum, if any