

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

118

CWP-9322-2024

Date of Decision: April 25, 2024

Bipin Sher Singh

.....Petitioner(s)

Vs.

Union of India and others

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Jagmohan Singh Bhatti, Advocate
for the petitioner(s).

Ms. Promila Nain, Advocate
for respondents No.1 and 2-UOI.

Mr. Saurabh Goel, Advocate
for UT, Chandigarh.

SANJEEV PRAKASH SHARMA.J. (ORAL)

The petitioner by way of this petition has challenged the Notification dated 29.03.2022 wherein the Union Territory of Chandigarh Employees (Conditions of Service) Rules, 2022 have been promulgated whereby it has been provided that the conditions of service of employees appointed under Group 'A', Group 'B' and Group 'C', under the administrative control of Union Territory of Chandigarh, shall be the same as the conditions of service of the persons appointed to corresponding services and posts in the Central Civil Services of Government of India and shall be governed by the same Rules and orders. The services of Group 'D' employees under the administrative control of Union Territory of Chandigarh, shall be the same as the conditions of services of the persons appointed to the corresponding group 'C' posts in Central Civil

Services. The Rules also provided that the conditions of services including pay-

scales in respect of teaching faculty of institutions governed by AICT, Council of Architecture and UGC shall be such as specified in the regulations made by such Councils or Commissions.

2. The petitioner also challenged the policy decision taken by the Chandigarh Administration, (Department of Personnel) dated 04.03.2024, whereby it has reviewed its policy regarding continuation of contractual engagement of employees on direct contract basis in the Departments of Chandigarh Administration.

3. Learned counsel for the petitioner submits that there was no occasion to frame the new Rules and conditions for contractual employees and the petitioner who has been working since long on contract basis should be allowed to continue without any hindrance and further steps should be taken to regularise his services.

4. A perusal of the case file reveals that the petitioner is admittedly an employee working on the contract basis as lecturer in Computer Science at Central Polytechnic College, Chandigarh. He has been working on the said post since 14.03.1996 continuously on contract basis and also getting pay-scale. We have considered the submissions. A bare perusal of the order dated 04.03.2024 reflects that the Administration has taken the following decision: -

“ I am directed to refer on the subject noted above and to state that the matter with regard to continuation of contractual engagement(on direct contract basis) in the departments of the Chandigarh Administration has been reviewed and it has been decided as under:-

i. The Department(s) may ascertain the functional requirement against (a)vacant posts or (b) posts which have fallen under abolished category (as result of instructions/guidelines issued by the Ministry of Home Affairs as well as Ministry of Finance, Govt. of India vide OM No.U. 13034/66/2023-CPD(CHD) dated

06.11.2023 and No.7(1)/E. Coord-1/2017 dated 05.01.2024 as circulated by the Finance Department, Chandigarh Administration vide letter No.27/4/14-UTFII (12)/2023/17774 dated 05.12.2023 and No.800-UTFII (12)-2024/603 dated 10.01.2024).

The Department(s) shall send the proposal to the concerned line Ministry of Govt. of India for creation/revival of the said abolished post(s) in terms of para No.3 & 5 of the OM No.7(1)/E Coord-1/2017 dated 05.01.2024 The said exercise must be completed within a period of one week.

The person(s) who fulfill the eligibility criteria for the post may continue to be engaged on direct contract basis, subject to the following conditions:

- (a) Regular recruitment is to be done against the alive and sanctioned post(s) at the earliest;*
- (b) Functional requirement (as mentioned in sub-para No.(i) above) exists and administrative exigencies are there;*
- (c) Continuation of contractual engagement may be considered till regular incumbent(s) join against the alive and sanctioned post. In case of abolished posts, the contractual engagement may be considered till the said post is revived/created and regular recruitment is made;*
- (d) The continuation shall be subject to satisfactory performance of the employee;*
- (e) Budget under the Wages Head is available/made available with the respective Department,*
- (f) Engagement of the direct contractual employee(s) may be considered beyond the approved tenure, where functional requirement and administrative exigencies exist and regular recruitment is likely to take some time inspite of sincere efforts of the Department. In such cases, prior concurrence of the Finance Department will be mandatory;*
- (g) The remuneration of the contractual employee(s) will not be payable from the Salary Head. The remuneration will be payable/drawn from the Wages Head of the respective Department,*

(h) The remuneration to be paid to the employee(s) engaged on direct contract basis will remain the same (including DA) as on date and will be governed in future as per terms of Contract (except the condition pertaining to existence of vacant post)."

5. This Court has time and again observed that contractual appointments on permanent posts are not in consonance with the basic principles and ethos of the Constitution envisaged under Article 14 and 16. It deprives the qualified eligible candidates from participating in the selection process, and encourages back door entries. The UGC regulations of 2010 laid down the method and manner of selection of various teachers in the Universities and affiliated Colleges.

6. The State Government cannot be allowed to regularise teachers who have been appointed by back door method even if they have acquired qualifications later on as the others have been deprived from participating in the selection. One of us (HMJ Sanjeev Prakash Sharma), while sitting singly, has also passed a judgment in ***CWP No.23738-2011*** passed in case titled as '***Garima and others Vs. State of Punjab and others***' decided on 14.09.2023 with observation and held as under:-

" 22. this Court does not find any reason to allow the State Govt. to regularize the respondents by adopting a course alien to the UGC Regulations of 2010. The respondents and similarly placed Asstt. Professors would, therefore, have to participate in the regular selection. It is, however, left open to the State to grant certain bonus marks for teaching experience gained by such adhoc Lecturers. It is always good to have experienced teachers. However, the level of education cannot be reduced in such a way as to lower down the overall standard of higher education. This Court has also perused the criteria which was adopted by the committee formed for regularizing the

adhoc Lecturers and finds that such criteria will open a precedent to encourage backdoor appointments. The method and manner of selection of the adhoc Lecturers cannot be said to be absolutely fair and transparent and, therefore, the same cannot be approved. Even though, the respondents may have been allotted the minimum of the pay scale and may also be receiving increments, then too they cannot be equated to Asstt. Professors appointed after undergoing regular selection in terms of UGC Regulations of 2010.”

7. In view of the above, we find that basis of issuance of the order of Chandigarh Administration dated 04.03.2024 is to direct the authorities concerned to conduct regular recruitments against existing sanctioned posts at the earliest and such a policy decision does not require any interference. We also find that the petitioner has been allowed to continue on contract basis till regular selections are made, as it is apparent from the letter dated 26.03.2024 issued by the HOD (Annexure P-47).

8. In view thereof, we are of the opinion that there is no right available to contractual employee to continue on the post and no right can be said to have been taken away if the respondents have decided to conduct regular selections. We are also of the opinion that the Chandigarh Administration should take steps for conducting regular selections at the earliest, preferably within a period of six months from today by issuing appropriate advertisement and inviting applications. Age relaxation may be granted to the persons, who have already been working with the Education Department on contract basis so that they may also participate in the selection process.

9. As such the Notification dated 29.03.2022 does not in any manner affect the petitioner who is simply working on contract basis. The Notification

10. With the aforesaid observations the instant writ petition is dismissed.
11. All pending applications, if any, stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

April 25, 2024
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Whether speaking/reasoned: Speaking

Whether reportable: Yes / No