



**CM-17335-CWP-2024 in/and
CWP-1372-2015 (O&M) 1**

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

(104+205)

**CM-17335-CWP-2024 in/and
CWP-1372-2015 (O&M)
Date of Decision : October 22, 2024**

Rohit Saini

.. Petitioner

Versus

**Board of Governors, Beant College of Engineering and Technology,
Gurdaspur and another**

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. R.K. Malik, Senior Advocate, with
Mr. Sandeep Dhull, Advocate, for the petitioner.

Mr. Vipin Mahajan, Advocate and
Ms. Chandanpreet Kaur Ahluwalia, Advocate,
for the respondents.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-17335-CWP-2024

As prayed for, the application is allowed.

Reply to the application i.e. CM-14254-CWP-2024 is taken on
record.

CM-14254-CWP-2024

As prayed for, the application is allowed.

Annexures R-2/11 and R-2/12 are taken on record.

CM-14229-CWP-2017

As prayed for, the application is allowed.

Annexures R-2/5 to R-2/8 are taken on record.



**CM-17335-CWP-2024 in/and
CWP-1372-2015 (O&M) 2**

CWP-1372-2015

1. In the present writ petition, the grievance of the petitioner is qua the order dated 31.12.2014 (Annexure P-6) by which, the petitioner who was working as Assistant Professor in Mechanical Engineering on consolidated salary, on contractual basis, has been terminated on the ground that fresh selection process has been initiated by inviting applications.

2. The prayer of the petitioner is that the petitioner should be allowed to continue in service till the post is filled on regular basis.

3. By an interim order of this Court dated 28.01.2015, the petitioner is continuing in service.

4. The respondents have appeared and filed the reply wherein, the respondents have stated that the petitioner was appointed as a Guest Faculty Lecturer in the Mechanical Engineering and as his term had come to an end, he has been relieved from service. It has been further mentioned by the respondents that as of now, the fact is that keeping in view the interim order granted by this Court, the petitioner is allowed to work in the Mechanical Engineering Branch whereas, the regular faculty of the Mechanical Engineering branch is being made to work in the civil side so that the petitioner could be accommodated so as to comply with the interim order. The respondents have further stated that the strength of the students in the Mechanical Engineering Department has been reduced and as of now, there are only 91 students studying in the Department against the sanctioned strength of 420.

5. Learned counsel for the respondents submits that the services of the petitioner cannot be allowed to continue keeping in view the shortage of the students as against the sanctioned strength.



**CM-17335-CWP-2024 in/and
CWP-1372-2015 (O&M) 3**

6. Learned senior counsel for the petitioner rebuts the same and submits that there are 22 regular posts out of which, 21 have been filled up and out of 21 filled up posts, 16 are working on regular basis and 5 are working on consolidated/Lecturer basis which includes the petitioner and therefore, as the respondents needs the service of the petitioner, the petitioner be allowed to continue.

7. Learned senior counsel for the petitioner further submits that there are two other employees namely Arun Nanda and Dr. Sandeep Gandotra, who are working on consolidated salary and were appointed after the petitioner and therefore, in all circumstances, the petitioner should be allowed to continue in service.

8. Rebutting the said fact, learned counsel for the respondents submits that in the year 2014, a fresh selection process was undertaken and without there being any objection, the petitioner participated in the said selection process and failed to clear the said selection process whereas, Arun Nanda and Dr. Sandeep Gandotra cleared the said examination, which fact is clear from the letter Annexure R-2/1 with the reply.

9. Learned counsel for the respondents further submits that the present writ petition was filed by citing CWP No.26451 of 2014 wherein, another employee who also could not clear the selection test, had approached this Court and had got an interim order due to which, the petitioner was also given the interim order but the said writ petition has already been dismissed by the Coordinate Bench of this Court.

10. I have heard learned counsel for the parties and have gone



**CM-17335-CWP-2024 in/and
CWP-1372-2015 (O&M) 4**

through the record with their able assistance.

11. It may be noticed that the petitioner is working in the institute on contractual basis. A contractual employee has no right to claim continuation in service even if the sanctioned strength of the students to be taught is changed. The only plea is that he should not be replaced with another set of employees. In the present case, the claim of the petitioner when he approached this Court is that the posts have been advertised again and he will be replaced but no name has been given with whom the petitioner was sought to be replaced.

12. From the pleadings, it has also transpired that against the sanctioned strength of 420 students, only 91 are working in Mechanical Engineering Department. The respondents are also on record to say that the regular teachers in the Mechanical Engineering Department, are being asked to work in the Civil Engineering so as to accommodate the petitioner keeping in view the interim order granted in favour of the petitioner. It is further stated that as of now, there exists no work for the petitioner to be performed but he is only continuing under the interim orders of the Court for the last 10 years though at the time when the petitioner approached this Court, he only had one year service to his credit.

13. Once, the petitioner is not being replaced by another set of employees, the petitioner cannot claim continuance in service.

14. The argument of the learned senior counsel for the petitioner is that the petitioner is within the sanctioned strength of the post and therefore, is liable to be allowed to continue in service.

15. It may be noticed that sanctioned strength which has been



**CM-17335-CWP-2024 in/and
CWP-1372-2015 (O&M) 5**

prescribed by the respondents is 420, keeping in view the anticipated number of students who will take admission in the Course. Once the number of students to be taught has been decreased four time i.e. from 420 to 91, it cannot be said that 22 teachers are still required to perform the duties in the cadre of Mechanical Engineering.

16. Further, it is the institute that is the best judge to decide as to how many teachers are required to discharge the duties of the post keeping in view the number of the students admitted to the institution. Neither the Court nor the petitioner can dictate the terms to the employer that a particular number of teachers should be employed so as to teach the students. The same is the prerogative of an employer. The said discretion of an employer cannot be taken away unless and until it is proved on record that the decision so taken by the employer is arbitrary or illegal or is clothed with mala fide intention. In the present case, no such fact has been brought on record to substantiate that the respondents intentionally want to terminate the services of the petitioner for the reasons other than decreased strength of the students.

17. The last argument which has been raised by the learned senior counsel for the petitioner is that there are two other employees, who have been allowed to continue despite being appointed after the petitioner hence, the petitioner should also be allowed to continue.

18. It may be noticed that two other employees namely Arun Nanda and Dr. Sandeep Gandotra competed along with the petitioner for Lecturer in the said Department and petitioner failed to clear the said examination whereas the said two candidates cleared the same. Even if the



**CM-17335-CWP-2024 in/and
CWP-1372-2015 (O&M) 6**

said selection was not finalized but two candidates cleared the said selection process, in which the petitioner failed. In case, three employees have competed for a post and out of which, one has failed, the failed employee cannot claim precedent over the other two employees who cleared the selection process even if the said selection process was not taken upto the finality.

19. Not only this, the petitioner had approached this Court by citing CWP No.26451 of 2014 to claim the same relief. The said writ petition has already been dismissed and the said employee is no longer in the service of the respondent-Institute. Once, the petitioner claimed similarity with petitioner in CWP No.26451 of 2014, which writ petition has already been dismissed and said employee's services have already been terminated, the petitioner has to face the same action as petitioner himself projected before this Court to the similarly situated as the petitioner in CWP No.26451 of 2014.

20. Keeping in view the above, as the students' strength has been decreased four times and as per the respondent employer, the services of the petitioner are no longer required, no interference is called for by this Court.

21. Before parting with the judgment, it is made clear that in case in future, the sanctioned strength of the students increases and there is a requirement of staff in the Mechanical Engineering Department on temporary basis, the first option will be given to the petitioner to join the course instead of making any other appointment from the open market and in case the petitioner does not accept the said proposal, the respondent-Institute will be free to make appointment from any other source as they

