



2024:DHC:7369



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

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Date of Decision: 04th September, 2024+ **W.P.(C) 15417/2023****DR ANJALI VINOCHA THROUGH HER AUTHORIZED
REPRESENTATIVE DR ARUN WADHAWANPetitioner****Through: Mr. Rajneesh Sharma and Mr.
Deepak Juneja, Advocates****versus****GOVT OF NCT OF DELHI & ANR.****.....Respondents****Through: Mrs. Avnish Ahlawat, Standing
Counsel, GNCTD (Services) with Mr. Gaurav
Dhingra, Mr. Shashank Singh, Mr. Nitesh Kumar
Singh, Ms. Laavanya Kaushik, Ms. Aliza Alam
and Mr. Mohnish Sehrawat, Advocates****CORAM:****HON'BLE MS. JUSTICE JYOTI SINGH****JUDGMENT****JYOTI SINGH, J. (ORAL)****CM APPL. 61827/2023**

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

W.P.(C) 15417/2023, CM APPLs. 61828/2023 and 18893/2024

3. This writ petition has been preferred on behalf of the Petitioner under Article 226 of the Constitution of India seeking a direction to the Respondents to allow the Petitioner to re-join her duties at Delhi State Cancer Institute (hereinafter referred to as 'the Institute') w.e.f. 26.06.2023 or in the alternative, to keep the post held by the Petitioner vacant till completion of Master of Science Program in Diagnostic Genetics and



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Genomics in the School of Health Professionals at UT MD Anderson Cancer Center, Houston, Texas, USA ('MDACC') with a further direction to extend the service contract of the Petitioner for a period of 5 years from 01.07.2023.

4. Facts to the extent relevant and emerging from the writ petition are that Petitioner joined the Institute as Assistant Professor (Laboratory Medicine) on contractual basis on 19.08.2013 for a period of 5 years. The contract was extendable annually on the basis of performance during the previous year. The contract of the Petitioner was lastly renewed for one year from 01.07.2022 to 30.06.2023.

5. On 25.07.2022, Petitioner was admitted into Master's Program in Diagnostic Genetics and Genomics at MDACC. Thereafter she sought leave for 2 years and permission to join the course. On 05.08.2022, the Institute relieved the Petitioner w.e.f. 02.08.2022 (AN) for a period of 2 years commencing from 19.08.2022 subject, however, to certain conditions *viz.* (a) Petitioner may re-join her services at the Institute subject to availability of vacant post at that time; (b) there will be no financial liability on the Institute for two years duration of the course; and (c) in case of rejoining, the said period of two years duration shall be counted as *dies non* without any financial/administrative benefits.

6. In May, 2023, the Institute published an advertisement No. 05/2023 inviting applications for various posts including the post held by the Petitioner. Admittedly, Petitioner applied against this advertisement but as a matter of record did not come for the interview. On 26.06.2023, Petitioner wrote to the Institute expressing her desire to re-join with immediate effect and this was followed by a reminder dated 03.07.2023. While the contracts



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of other faculty members were extended for a period of 5 years, the same treatment was not given to the Petitioner.

7. It is averred in the petition that on 31.07.2023, Institute informed the Petitioner that to enable the Institute to process her case for re-joining, Petitioner was required to fulfill certain pre-requisites viz.: (a) provide attendance certificate of 1st and 2nd semesters from MDACC; (b) make a fixed deposit of Rs.4,57,670/- in favour of the Institute for excess payment made towards academic allowance; and (c) furnish a '*no dues certificate*' from all concerned departments. Petitioner responded to the said letter on 05.08.2023 and provided the necessary details from MDACC. She requested the Institute to adjust the fixed deposit amount from the security of Rs. 3,00,000/- deposited with the Institute and as for the *no dues certificate*, the same was not required according to her since she was re-joining. On 09.08.2023, Petitioner gave a representation to Respondent No.1 to permit her to re-join but getting no response, she joined the 3rd semester at MDACC on 17.08.2023. The Institute issued Advertisement No.05/2023 in May, 2023 inviting applications for the post of Assistant Professors in various disciplines including the post of Assistant Professor (Laboratory Medicine) and the selection was based on personal interviews. Petitioner also applied for the post of Assistant Professor (Laboratory Medicine) against the said advertisement and was called by the Institute vide e-mail dated 21.11.2023 to appear before the Selection Committee for personal interview on 01.12.2023. Apprehending that the post will be filled, since the Institute had started the process of interviews pursuant to the advertisement, Petitioner filed the present petition and vide order dated 22.12.2023, Court permitted



the Institute to continue the recruitment process pursuant to advertisement No.05/2023 but directed that one post in the Unreserved category to which the Petitioner belongs, be kept reserved.

8. Learned counsel for the Petitioner argues that the impugned action of the Institute in not renewing the contract of the Petitioner and not allowing her to re-join on the post of Assistant Professor (Laboratory Medicine), is wholly illegal and arbitrary. Petitioner was granted 2 years sabbatical leave and relieved only to acquire higher academic qualification and the employer-employee relationship was not severed. Petitioner was neither terminated nor resigned. Even otherwise, her services could not be terminated without issuing three months notice or pay in lieu thereof in terms of clause 6 of the appointment letter. Director of the Institute had no power to terminate the Petitioner and therefore assuming that services of the Petitioner were terminated, it was an illegal termination. Power to terminate the services of an employee vests only in the Governing Council of the Institute, which was never exercised. Institute itself processed the case of the Petitioner for re-joining by asking her to fulfill certain pre-requisites and cannot now turn around and take a plea that Petitioner cannot be permitted to re-join.

9. It is further contended that Petitioner joined the course at MDACC with due permission of the Competent Authority of the Institute after she was granted leave for two years and had every right to re-join during the subsistence of the contract and even thereafter, if the post was vacant and was advertised. When Petitioner expressed her intent to re-join on 26.06.2023, her contract was subsisting and the post was lying vacant. It is



urged that while relieving the Petitioner on 05.08.2022, Institute was aware that her contract was expiring on 30.06.2023 yet it sanctioned the leave till August, 2024, which amply demonstrates that the intent of the Institute was to dispense with the services of the Petitioner.

10. It is further argued that the entire selection process undertaken pursuant to Advertisement No. 05/2023 is illegal and arbitrary as the present acting Director was not a regular Director and had no authority to initiate a regular appointment process. Institute appreciated that it was the right of the Petitioner to upgrade her academic profile and knowledge for career enhancement and hence study leave was granted. Clause 33 of the appointment letter of the Petitioner reflects that the Institute encourages improvements in the academic skills of its employees and permitted the Petitioner to join a course both in India and abroad. Clause 20(b) provided that professional/academic achievement was a factor for accessing the performance for the purpose of extension of contract, regularization and promotions etc. and therefore, the pursuit of the Petitioner to gain higher academic knowledge by taking two years' study leave, cannot be a reason to discontinue her services and re-advertise the post.

11. Learned counsel for the Petitioner further urges that clause 33 of the appointment letter dated 03.07.2013 only mandated that Petitioner will not join any other assignment without prior written approval of the Competent Authority but did not require the Petitioner to take permission before applying for the course at MDACC through proper channel or even to give prior intimation that Petitioner was applying. Petitioner had dedicatedly served the Institute without any cause for complaint and was repeatedly



writing expressing her readiness and willingness to re-join the duties but ignoring all this, while the contracts of other persons were extended, Petitioner was singled out and her post was re-advertised. Petitioner has a vested right for consideration for renewal of the contract on account of her satisfactory performance and in this context relies on the judgment of the Supreme Court in *Vinod Kumar and Others v. Union of India and Others*, **2024 SCC OnLine SC 1533**, wherein the Supreme Court observed that the fact that the employees were working for more than 25 years, without any indication of temporary nature of their roles being reaffirmed or the duration of such temporary engagement being specified, merited a re-consideration of their employment status.

12. Explaining the reason why Petitioner did not come for the interview pursuant to Advertisement No.05/2023, learned counsel submits that in fact Petitioner was not required to apply against the said advertisement as she was already an employee of the Institute on authorised sabbatical leave and this was merely an impulsive action due to insecurity of losing the job. Realising the mistake of applying afresh, Petitioner did not appear for the interview and instead sought permission to re-join, since a fresh appointment would have wiped of her 10 years past service.

13. Questioning the very issuance of fresh Advertisement No.05/2023, learned counsel further submits that a plain reading of the advertisement would show that the Institute was seeking to appoint contractual employees and not regular employees, which was legally impermissible in view of the law laid down by the Supreme Court in the judgment of the Constitution Bench in case of *State of Haryana and Others v. Piara Singh and Others*,



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1992 (4) SCC 118, that contract employees cannot be replaced with another set of contract employees. Reliance is also placed on the judgments in ***Union of India and Others v. Hitender Kumar Soni, (2014) 13 SCC 204*** and ***Manish Gupta and Another v. President, Jan Bhagidari Samiti and Others, (2022) 15 SCC 540***.

14. Mrs. Ahlawat, on the other hand, contests the writ petition and submits that no case is made out for extension of contract of the Petitioner, as sought by her. It is argued that Petitioner was relieved from her post of Assistant Professor (Laboratory Medicine) at the Institute as she wanted to pursue a Graduate Program in Diagnostic Genetics and Genomics at MDACC for a period of two years commencing from 19.08.2022. On being relieved, her services stood terminated without any lien and even otherwise, the extended period of contract expired on 30.06.2023 and further extension was not a matter of right. The last extension was granted on 01.07.2022 and till then, Petitioner had not informed the Institute about her intention to join a course abroad and for the first time information was received by the Institute when Petitioner sought sabbatical leave for two years to join the Master's Program at Texas, USA, vide letter dated 25.07.2022. Clause 33 of the appointment letter mandated a written approval from the Competent Authority in case the Petitioner wanted to join an academic program anywhere within or outside the country.

15. On the aspect of the relieving order, Mrs. Ahlawat submits that a plain reading of order dated 05.08.2022 would show that relieving of the Petitioner for a period of two years was subject to three conditions *viz.* (a) joining was subject to availability of vacant post; (b) Institute was to bear



no financial liability for the two year duration; and (c) on rejoining the period was to be treated as *dies non*. This shows that Petitioner was completely aware that her re-joining was not a matter of right and even otherwise the nature of the appointment was purely contractual. There is no challenge to the order dated 05.08.2022 in this petition.

16. It is further argued that the plea of the Petitioner that she was eager and willing to rejoin the Institute is belied by the fact that on her own showing she was enrolled as full-time student in the graduate program at University of Texas where the course duration was 5 semesters out of which she had only completed 2 years and had moved into the 3rd semester. Therefore, even while leaving, Petitioner was aware that she will be unable to join the Institute from January, 2024 and as an afterthought asserts a right on false pleas.

17. It is vehemently urged that the interim order granted by this Court in favour of the Petitioner reserving one vacancy is causing grave prejudice to the Institute and therefore the interim order be vacated to enable the Institute to fill-up the post. It is brought forth that the post in question is an important and sensitive post in the Institute, which is a Cancer Institute. The hospital which treats indoor patients has 169 beds and an OPD. The footfall in the OPD is approximately 500 cancer patients each day. In the year 2023-24 itself, the total OPD patients were more than one lakh. There is no other dedicated cancer hospital which treats patients free of cost. The hospital provides in-house free facilities to cancer patients including chemotherapy, radiation therapy, onco-surgery etc. Hospital has 40 Chemotherapy chairs and 3 Laboratories for blood tests etc. All the 3 Laboratories work 24X7 and



approximately 1500 to 1600 tests are conducted each day in these Laboratories. Petitioner was in-charge of Biochemistry Laboratory but without caring for the onerous duties that she was required to perform, she joined a course abroad without any prior intimation and/or approval to join the course and is not entitled to any relief from this Court.

18. It is further submitted that looking at the nature of the post and an urgent requirement to fill-up the same, the Institute advertised the post in May, 2023 which included other posts of Assistant Professors also. The last date for submission of the application was 31.05.2023, extended upto 31.10.2023. Selection was based on a personal interview of the candidates by a duly constituted Selection Committee. Petitioner vide letter dated 26.06.2023 sought rejoining after she admittedly saw the advertisement. Amongst others who applied for the post of Assistant Professor (Laboratory Medicine), Petitioner was also an applicant and was called for an interview vide e-mail dated 21.11.2023, which was scheduled for 01.12.2023. Petitioner never appeared for the interview though she had an option to request for interview through virtual mode. After the interviews, a panel was prepared which included two selected candidates and nine candidates in the waiting list. Petitioner has no vested right to claim renewal of her contract and for this Mrs. Ahlawat relies on the judgment of this Court in ***Sonalika Bhargava (Ms.) v. Govt. of NCT of Delhi & Ors., 2020 V AD (Delhi) 357.*** It is pointed out that Petitioner has not challenged the advertisement in the present petition and cannot question the selection process in the absence of such a challenge.

19. Heard learned counsel for the Petitioner and learned Standing Counsel



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for Respondents.

20. It is an undisputed position that Petitioner was appointed as Assistant Professor (Laboratory Medicine) at the Institute on contract basis for an initial period of 5 years from the date of joining, vide appointment letter dated 03.07.2013 and the contract, which was extendable annually based on performance during the previous year, was extended from time to time and lastly upto 30.06.2023. It is equally undisputed that Petitioner applied for sabbatical leave for two years to join Master of Science Program in Diagnostic Genetics and Genomics in the School of Health Professionals at MDACC and on her request she was relieved vide order dated 05.08.2022. According to the Petitioner, she was entitled to re-join on her return as a matter of right while the stand of the Institute is that while relieving her, it was made clear that her re-joining would be subject to availability of the vacancy. It is clear from order dated 05.08.2022 that Petitioner was granted sabbatical leave subject to three conditions: (a) re-joining would be subject to availability of vacancy at the relevant time; (b) Institute had no financial liability during this period; and (c) in case of re-joining the two years period was to be treated as *dies non*. The pre-condition that Petitioner's re-joining would be subject to availability of vacancy clearly connotes that Petitioner was aware that extension of her contract and/or re-joining was not a matter of right. This order was never challenged by the Petitioner and even in the present petition the order is unassailed. The objective behind placing such a condition while relieving the Petitioner for two years is clearly understandable as the Institute where she was working is a Cancer Hospital with a huge footfall of over 500 people in a day and the Petitioner was



working in a Bio-chemistry Laboratory where 100s of tests are to be conducted in a given day. Therefore, the Institute could not be expected to keep a vacancy for two years and had clearly warned the Petitioner that on her coming back after two years, the vacancy may not be available. With her eyes open, Petitioner accepted the condition and left for the course at USA. Mrs. Ahlawat also rightly contends that Clause 33 of the appointment letter required the Petitioner to take approval from the Competent Authority before joining an academic program and the expression 'joining' cannot be construed to mean that the Petitioner could apply for a long course of two years duration and inform the Institute at the last moment, as this would frustrate the objective of incorporating the said Clause, which was to ensure that the Institute had timely notice that Petitioner may not be available for a long duration so that an alternate arrangement could be made, considering that the Institute is a Cancer Hospital and Petitioner was performing onerous duties in the Bio-Chemistry Laboratory. Admittedly, Petitioner did not seek approval before applying for the 2 years course at MDACC and sought sabbatical leave only after she had got admission and the course was about to start.

21. More importantly, being a contract appointment, Petitioner cannot as a matter of right seek extension of a contract and at the highest the right extended to consideration in the selection process initiated by the Institute for filling up the post in question. Considering the sensitive and onerous nature of the duties of the post in question, the Institute rightly initiated the process of selection and issued Advertisement No.05/2023 in May, 2023 inviting applications for the post of Assistant Professors in various



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disciplines including the post of Assistant Professor (Laboratory Medicine) and the selection was based on personal interviews. Petitioner also applied for the post of Assistant Professor (Laboratory Medicine) against the said advertisement and was called by the Institute vide e-mail dated 21.11.2023 to appear before the Selection Committee for personal interview on 01.12.2023. However, for reasons best known to her, Petitioner abstained from the interview and instead filed the present writ petition. The explanation that the application was an impulsive reaction is only an afterthought and is neither here nor there. Petitioner took a conscious decision not to participate in the selection process and has only herself to blame for her non-consideration. Mrs. Ahlawat is also right in her submission that the repeated plea of the Petitioner that she was ready and willing to re-join is belied by the fact that on her own showing Petitioner had joined a full-time graduation program at the University of Texas, which has a course duration of five semesters and at the relevant time, she had enrolled herself in the 3rd semester and was fully aware that in no circumstance, she could join the Institute from January, 2024. In fact, her own letters show that on one hand the Petitioner was writing for re-joining but was contemporaneously continuing with the program and enrolled herself in the 3rd semester. It is clear that the Petitioner wanted to work with the Institute on her own terms and conditions, which cannot be permitted. The judgments relied upon by the Petitioner cannot aid her as she is herself to be blamed for staying away from the process of filling up the vacancy pursuant to an advertisement No. 05/2023. No employee can be permitted to approbate or reprobate by claiming on one hand that he or she is entitled to



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renewal of contract and on the other hand, not participate in the process of selection. Looking at the nature of the Institute and the need to fill the posts in question, no fault can be found with the Institute's action of issuing an advertisement to fill up the post in question. No employee can claim a vested right to renewal of the contract and at the highest the right extends to consideration, which was accorded to the Petitioner, by the Institute in the present case. There is no challenge to the advertisement and in the absence of the challenge, Petitioner cannot question the process of selection.

22. There is no merit in the writ petition and the same is dismissed. Interim order dated 22.12.2023, whereby the Court had directed the Institute to reserve one vacancy of Assistant Professor (Laboratory Medicine) in the Unreserved Category, stands vacated. Needless to state that if the Institute advertises any vacancy in future, it would be open to the Petitioner to apply. Pending applications also stand disposed of.

JYOTI SINGH, J

SEPTEMBER 04, 2024/kks/shivam