
Before H.S. Bedi & Viney Mittal, JJ.

SANGEETA SHARMA,—*Petitioner*

versus

UNION TERRITORY OF CHANDIGARH
AND OTHERS,—*Respondents*

C. W. P. NO. 10456 /CAT /2004

The 21st March, 2005

Constitution of India, 1950—226—Appointment of petitioner as a Lecturer on contract basis—Department relieving her from duties after about 6 years service—Tribunal allowing the petitioner to continue in service till regular appointees recruited in accordance with statutory rules—Petitioner seeking execution of orders of the Tribunal—Respondents claiming that no decision had been taken with regard to filling up the vacancies lying vacant—Tribunal dismissing execution application—Challenge thereto—Whether Court can direct an employer to fill up a particular post simply because the post is lying vacant—Held, no—If the department decides not to fill up certain vacancies, the persons working on the said vacancies on contract basis cannot be heard to claim the right to continue till regular selectees join—Department making fresh appointments on contract basis terming the appointees as guest faculty members—Respondents cannot be permitted to substitute one set of persons by another set of persons on contractual basis—However, where a vacancy suddenly arises during the course of the academic session then such appointment may be permissible.

Held, that the claim made by the petitioner through her original application was allowed by the learned Tribunal,—vide order dated 26th September, 2003. It is also apparent from the perusal of the aforesaid order that the petitioner, and all such persons similarly situated, would be entitled to continue on their posts till such time as duly selected lecturers join the said posts. However, we cannot lose sight of the fact that primarily, it is for an employer to fill up a particular post or not. The Court cannot direct an employer to fill up a particular post simply because the post is lying vacant. The stand taken by the respondent is that the administration has taken a decision not to fill up three posts lying vacant with them. Accordingly, the

petitioner cannot be heard to make any grievance against the non-filling up the aforesaid posts and if in these circumstances she is not allowed to continue any further. The direction contained in order dated 26th September, 2003, passed by the learned Tribunal, can only operate in a situation where the vacancies are lying vacant with the department and where the department chooses to fill up the aforesaid vacancies. It is in those circumstances that the department shall be under an obligation to continue the petitioner, and all such similarly situated persons, till the regular selectees join their posts. However, in a situation where the department decides not to fill up certain vacancies, the persons working on the aforesaid vacancies on contract basis cannot be heard to claim the right to continue till regular selectees join.

(Para 7)

Further held, that the respondents cannot be permitted to substitute one set of persons by another set of persons, on contractual basis alone, by terming the aforesaid appointments as “guest faculty appointments”. The aforesaid appointments may be permissible in a situation where a particular vacancy has arisen on account of a permanent employee proceeding on leave during the middle of session or in some similar situation during the course of the academic session. However, a guest faculty appointment cannot be permitted by way of an engagement at the commencement of the session and with a view to have a lecturer for teaching students for the whole academic sessions.

(Para 10)

Shri R. K. Sharma, Advocate, for the petitioner,

Shri Sanjiv Sharma, Advocate for the respondent.

JUDGMENT

VINAY MITTAL, J.

(1) This order shall dispose of two Civil Writ Petitions bearing Nos. 10456/CAT and 13225/CAT of 2004, as common questions of law and similar facts are involved. For the sake of convenience, the facts are being taken from C.W.P. No. 10456/CAT of 2004.

(2) Petitioner Sangeeta Sharma was initially appointed on contract basis as a Lecturer in Sociology in Government College, Sector-11, Chandigarh. Her initial appointment was for the period from 6th March, 1996 till 20th March, 1996. Subsequently, she was again appointed on contract basis on a fixed salary with effect from 7th February, 1997 and was relieved on 6th March, 2003. The petitioner approached Central Administrative Tribunal (hereinafter referred to as the "Tribunal) through OA No. 207/CH/2003 with a prayer that the order dated 6th March, 2003 relieving her from her duties was liable to be set aside as it was a violation of the orders of the Tribunal dated 16th March, 1998 passed in the case of Dr. Satinderjit Kaur. A further prayer was made to direct the respondents to allow her to continue in service as a Lecturer in Sociology till all the vacancies filled up on regular basis and to pay her minimum of the pay scale plus dearness allowance as allowed to similarly appointed employees in view of the law laid down in the case of Anupama Bhardwaj.

(3) The claim of the petitioner was contested by the respondents. They claimed that regular selections were being made for the appointment of lecturers in Sociology. The learned Tribunal,—vide order dated 26th September, 2003 allowed the original application filed by the petitioner. The relevant portion of the judgment of the learned Tribunal may be noticed as follows :

- “8. In all fairness, the applicant should have been allowed to continue on the post of Lecturer in Sociology on contract basis against any one of the vacancies in either of the four Colleges for Girls in which there is need for a Lecturer in Sociology, till such time duly selected Lecturer according to statutory rules joins. Since a number of vacancies remain unfilled as on 6th March, 2003, the applicant should have been accommodated against any one of them. The respondents have committed a grave error in relieving the applicant on the joining of Ms. Neelu Kang and this action of the respondents is clearly in violation of the well established legal position. The respondents have taken recourse to subterfuges to justify their illegal action.
9. In the result, the OA succeeds and is allowed. The applicant shall be treated to be continuing in service throughout ignoring the order dated 6th March, 2003 (Annexure

R/IV) and shall continue to serve in the capacity of contract appointee so long as there is a vacancy in either of the colleges. She shall also be entitled to the salary from 6th March, 2003 onwards including the salary for the vacation period. The amount of salary to be paid to the applicant shall be calculated at the minimum of the pay scale as admissible to the regularly appointed Lecturers in accordance with the statutory rules. It is, however, clarified that the engagement of the applicant on contract basis shall come to an end if the available vacancies are filled by the regular appointees recruited in accordance with the statutory rules.”

(4) Subsequently the petitioner filed a Miscellaneous/execution application before the Tribunal. It was claimed that her dues in accordance with the consequential benefits of the order dated 26th September, 2003 had not been paid to her and further that again she had been relieved from work with effect from 17th January, 2004 even though the vacancies existed to accommodate her. The learned Tribunal directed the applicant to specify the vacancies which, according to her, existed. An affidavit was, accordingly, filed by the petitioner before the Tribunal. However, the stand of the petitioner was contested by the respondents and it was claimed that no decision had been taken with regard to filling up the aforesaid three vacancies which still exist. The learned Tribunal,— vide order dated 28th April, 2004 has dismissed the aforesaid miscellaneous/execution application filed by the petitioner. The relevant portion of the order dated 28th April, 2004 may be noticed as follows :

“5. In spite of the fact that there are vacancies against which the applicant can be accommodated on contract basis, we find that she does not have a legal right to compel the respondents to accommodate or appoint her against the existing vacancies, firstly for the reason that the respondents have taken a decision not to fill in any one of the post lying vacant and secondly the applicant ceases to work as a contract teacher on the appointment of the regularly selected lecturer in accordance with the statutory rules. It is not the case of the applicant that some lecturers junior to her appointed on contract basis

in the subject have been retained in service. This Tribunal would not punctuate the administrative discretion of the respondent department. The fact remains that the applicant was appointed on contract basis. Her appointment came to an end on 17th January, 2004 when admittedly certain Lecturers appointed on regular basis came to join. The applicant accordingly stood relieved and her contract appointment came to an end. This Tribunal would not require the respondent department to accommodate the applicant against existing vacancy particularly keeping in view the fact that the vacancies have to be advertised inviting application from the candidates desirous of contract appointment. The applicant has been paid arrears of salary and allowances for the period up to 17th January, 2004.

6. The Miscellaneous Application is found to be devoid of any merits and substance and is dismissed without any order as to costs.”

(5) The order dated 28th April, 2004 has been impugned by the petitioner through the present writ petition.

(6) We have heard Shri R. K. Sharma, learned counsel for the petitioner and Shri Sanjiv Sharma, learned counsel appearing for the respondents and with their assistance have also perused the record of the case.

(7) It is not in dispute that the claim made by the petitioner through her original application was allowed by the learned Tribunal,—*vide* order dated 26th September, 2003. It is also apparent from the perusal of the aforesaid order that the petitioner, and all such persons similarly situated, would be entitled to continue on their posts till such time as duly selected lecturers join the said posts. However, we cannot lose sight of the fact that primarily, it is for an employer to fill up a particular post or not. The court cannot direct an employer to fill up a particular post simply because the post is lying vacant. The stand taken by the respondents is that the administration has taken a decision not to fill up three posts lying vacant with them. Accordingly, the petitioner cannot be heard to make any grievance against the non-filling up the aforesaid posts

and if in those circumstances she is not allowed to continue any further. The direction contained in order dated 26th September, 2003, passed by the learned Tribunal, can only operate in a situation where the vacancies are lying vacant with the department and where the department chooses to fill up the aforesaid vacancies. It is in those circumstances that the department shall be under an obligation to continue the petitioner, and all such similarly situated persons, till the regular selectees join their posts. However, in a situation where the department decides not to fill up certain vacancies, the persons working on the aforesaid vacancies on contract basis cannot be heard to claim the right to continue till regular selectees join.

(8) Faced with the aforesaid difficulty, Shri R. K. Sharma, the learned counsel for the petitioner, has argued that with a view to deny the claim of the petitioner and other similarly situated persons, the Union Territory Administration is employing a circuitous method by appointing fresh persons, terming them as "guest faculty members". It has been pointed out that on the one hand the services of the petitioner, and similarly situated persons, are not continued on the pretext that the vacancies are not to be filled up on regular basis but on the other hand fresh appointments are being made on contract basis terming the aforesaid appointees as guest faculty members.

(9) Shri Sanjiv Sharma, learned counsel appearing for the respondent-Administration has not been able to deny the aforesaid fact but has pointed out that the appointments by way of guest faculty members are made only with a view to overcome some difficulty faced by the department on account of some vacancies arising during the middle of the academic session.

(10) We have given our thoughtful consideration to the rival contentions of the learned counsel for the parties. In our considered view, the grievance made by the petitioner against the appointment of persons as guest faculty membership basis is well founded. The respondents cannot be permitted to substitute one set of persons by another set of persons, on contractual basis alone, by terming the aforesaid appointments as "guest faculty

appointments". The aforesaid appointment may be permissible in a situation where a particular vacancy has arisen on account of a permanent employee proceeding on leave during the middle of session or in some similar situation during the course of the academic session. However, a guest faculty appointments cannot be permitted by way of an engagement at the commencement of the session and with a view to have a lecturer for teaching students for the whole academic session. To this extent the grievance made by the petitioner is absolutely justified. Even otherwise from the order dated 26th September, 2003 we find that the learned Tribunal had itself directed that one set of contract employees could not be substituted by another set of contract employees. The aforesaid order has not been challenged by the Union Territory Administration at all and has attained finality.

(11) Accordingly, we dispose of the preset writ petitions with a direction to the respondents to continue the contract employees till such time, persons selected on regular basis join and in a situation where a decision has been taken not to fill up the vacancies on regular basis, it would be open for the administration not to continue the contractual employees any further. However, in such a situation it would not be open to the Union Territory Administration to appoint persons on guest faculty membership basis. However, in a situation where a vacancy suddenly arises during the course of the academic session, then in such a situation the administration will be well within its rights to make a temporary arrangement of guest faculty membership by inviting applications from all eligible persons and in such a situation the petitioner shall also be considered for such appointments. Since the current academic session is about to end, therefore, if any guest faculty members have been engaged for the current session, then they would be allowed to continue keeping in view the interest of students. However, these direction shall be strictly followed for the ensuing session.

R.N.R.