

Central Administrative Tribunal
Principal Bench

G.A.No.1494/2002
M.A.No.1205/2002

Hon'ble Shri M.P.Singh, Member(A)
Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 18th day of September, 2002

1. Ms. Krishna Kumari Gupta
Lecturer, Computer Engineering
2. Smt. Kavita Khatwani Vanvari
Lecturer, Civil Engineering
Working under Principal
Ambedkar Polytechnic
Shakarpur
Delhi - 110 092. ... Applicants
(By Advocate: Shri B.S.Mainee)

Vs.

Govt. of NCT of Delhi through

1. The Chief Secretary
Govt. of NCT of Delhi
Old Secretariat
Delhi.
2. The Director & Secretary
Directorate of Training &
Technical Education
Muni Maya Ram Marg
Pitam Pura
New Delhi.
3. The Principal
Ambedkar Institute of Technology
Shakarpur
Delhi - 110 092. ... Respondents
(By Advocate: Shri George Pereckin)

ORDER

By Shri Shanker Raju, M(J):

MA 1205/2002 for joining together is allowed.

2. Applicants, two in number, have assailed respondents' order dated 8.3.2002, 7.5.2002 and 30.5.2002 whereby the respondents have decided to terminate their services. Applicants have sought quashment of these orders and directions to the respondents to continue them and consider them for regularisation.

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3. Applicant No.1 was appointed as Lecturer (Computer Engineering) on contract basis vide Memorandum dated 22.12.1998 with the respondents and applicant No.2 as Lecturer (Civil Engineering) on contract basis on 17.11.1999.

4. As per the contract of appointment, the applicants were appointed on consolidated salary and the duration of appointment was one year extendable to maximum six months or till the post is filled up on regular basis through UPSC whichever is earlier. This would not confer upon the applicants any right of claim for regular appointment.

5. Though it is not disputed that the applicants are qualified for regular appointment, as per the recruitment rules. Their appointment was extended by the respondents from time to time. By a letter dated 8.3.2002 issued by Joint Secretary (TTE), Directorate of Training Education, the period of contract was extended till 31.5.2002 or till the candidates selected by UPSC, whichever is earlier. In pursuance thereof, the impugned office orders have been issued whereby the applicants have been informed that their services are no longer required after 31.5.2002 and would be terminated.

6. By an order dated 31.5.2002 respondents have been restrained from terminating^{ing} the services of the applicants.

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7. Shri B.S.Maine, learned counsel appearing for the applicants, contended that though the applicants were appointed on contractual basis yet their performance was satisfactory without any break and were working against a regular post.

8. Shri B.S.Maine further stated that admittedly, there are vacancies in the discipline, in which the applicants have been appointed, and their services cannot be dispensed with without being replaced by duly selected candidates from UPSC. As after the year of 2000 there is nothing on record to suggest that the regularly selected incumbents from UPSC have been appointed in place of the applicants, as such their termination is arbitrary, based on extraneous grounds and amounts to exploitation unlike of a model employer. It is further stated that the contractual employees cannot be replaced by another set of contractual employees till the regularly selected candidates, through UPSC, are available, the respondents should have continued the services of the applicants.

9. Shri B.S.Maine, in his rejoinder, has stated that one post is vacant in the engineering discipline in which applicant No.1 can be accommodated and another post is also available in Civil Engineering where applicant No.2 is working. According to him, a long period of about three years cannot be treated as stop gap arrangement and the respondents have failed to indicate the names of any

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appointees, through UPSC, available to replace the applicants. It is stated that applicants are working on very post of which they were initially appointed.

10. On the other hand, respondents' counsel, Shri George Pereckin, rebutted the contentions and stated that as per the arrangement and terms and conditions of engagement the appointment was valid for one year or till the candidate, selected through UPSC, joins. It is stated that after recommendation of candidates by the UPSC, against the post of Lecturers were appointed as such they do not require the services of the applicants. It is further stated that some vacancies arisen subsequently where no UPSC recommendation has been made and no regular appointment had been taken yet. As a policy decision it has been decided to appoint Lecturers on part-time basis on hourly rate payment and if the arguments of the applicants is considered, then every vacancy occurring shall have to be existed till it is regularly filled up by through UPSC, and contract Lecturers creating a right on them amounting to creation of class within the class which is repugnant to the terms of contract. By referring to a decision of the High Court of Delhi in CWP No.7345/2000 in Hari Bhushan v. Govt. of NCT of Delhi, it is contended that the identical claim for regularisation and accord of salary at par with regular Lecturers has been rejected. Further placing reliance on a decision of the Co-ordinate Bench in OA 580/2002 in Prakash Chandra v. The Lt. Governor, Delhi & Others, it is stated that contract Lecturers (Business Administration) approached this Court for the

identical relief which was rejected. As the decision, in all four, covered the case of the applicants, the OA is liable to be dismissed.

11. It is stated that the respondents are sending requisition to the UPSC for filling up of posts of Lecturers in various discipline, the applicants have liberty to apply against such UPSC advertisement and if they qualified in merit they would be regularly appointed. It is further stated that applicant No.2 has already applied to the UPSC. It is further stated that merely because the applicants have requisite qualifications, they do not have any indefeasible right being on contract basis to be continued indefinitely or regularised de-hors the rules.

12. It is the UPSC, which is to be satisfied on the basis of performance and interview, to select the applicants for regular appointment.

13. Lastly, it is contended that the respondents have already appointed regular lecturers, selected through UPSC, who can perform the work, which was performed by the applicants, and the teaching work can also be managed by engaging Lecturers on part time basis at an hourly ~~rate~~^{rate} fixed by the Government.

14. In so far as the wages are concerned, it is stated that duties and responsibilities of regular Lecturers are much greater than those of Lecturers engaged on contract basis.

15. We have carefully considered the rival contentions of the parties and perused the material on record. It is stated by Shri George Pereckin, at Bar, that they are not going to fill the posts by another set of contract employees and are capable of managing the work without the applicants.

16. In our considered view, the applicants though qualified as per the recruitment rules, for the post they were appointed on contract basis, and as per the terms and conditions the maximum period was one year extendable to six months or till the post filled up on regular basis through UPSC.

17. Applicants cannot be appointed on regular basis de-hors the rules which stipulate their selection through UPSC on the basis of their merit in accordance with Rules. Admittedly from time to time, the respondents have advertised the post and sent it to UPSC and the applicants being qualified, they are at liberty to apply such an advertisement and on that basis if they qualified on merit and recommended by UPSC, only then, are to be appointed on regular basis. Merely because they have continued on stop gap arrangement on contract basis would not confer any indefeasible right for regularisation de-hors^{ly} the rules. In this view of the matter, we are fortified by the decision of the High Court in Hari Bhushan's case supra.

18. In so far as the claim of the applicants that the respondents have failed to indicate the vacancies position, they worked against the clear vacancy, no appointment has been made through UPSC to replace them, and they have a right to be continued till they are replaced by regularly selected lecturers through UPSC is concerned, the same has no legs to stand. In our considered view merely because the applicants were on contract basis and their contract was extended, would not confer upon them a vested right to be continued indefinitely on contract basis as a Lecturers. It is settled position of law that de hors^v the rules one cannot be regularly appointed to a post. The only mode of regular appointment is through UPSC and for that the requisition has already been sent from time to time by the Department, the applicants are at liberty to apply to such UPSC advertisement and in case they are selected on merit, they could be appointed to the post on regular basis, nobody can be appointed de hors the rules.

19. In so far as the contention that there exists vacancies against which the applicants are working and as nobody has been appointed by the UPSC on regular basis, they have a right to continue and to be replaced only when the UPSC candidate is available, is a fallacy which cannot be countenanced in the facts and circumstances of the case.

20. The stand of the respondents that after their term and in view of their requisition to UPSC they have no right to be continued as their term is already expired on 31.5.2002. As regards the fact

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that the work performed by the applicants, has been decided to be entrusted to their regularly appointed Lecturers and to be assigned to part time Lecturers on hourly rate fixed by the Government, cannot be questioned, being a policy decision and not actuated by malafides or arbitrariness. If the contention of the applicants is accepted, and all the vacancies left to be filled up through regularly appointed Lecturers from UPSC, the same are to be filled up by the Contract Lecturers and this would be an antithesis to the terms and conditions and would vest the contract lecturers a right to be continued indefinitely. This would also create a class within the class which would be violative of Constitution of India.

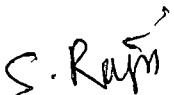
21. Another aspect of the case is that the applicants who have been offered appointment on contract basis, as per the terms and conditions voluntarily consented to it on their own free will, now going back from the terms and conditions and seeking anything repugnant to it, cannot be countenanced. Moreover, we do not find the terms and conditions as unconscionable.


22. In view of the discussion made above, and keeping in view of the fact that the respondents have taken a decision not to engage any contractual employee or to fill up these posts through them, we do not find any merit in the claim of the applicants and OA is accordingly dismissed without any order as to costs.

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23. However, this goes without saying that the applicants are at liberty to take appropriate steps and are at liberty to apply for regular appointment as per the rules, and in the event the respondents decide to engage contractual employees as Lecturers, the applicants shall be given preference over the freshers and juniors.

24. In view of the above, interim order already issued on 31.5.2002 is hereby vacated.


(Shanker Raju)
Member(J)


(M.P. Singh)
Member(A)

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