

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

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**ORIGINAL APPLICATION NO.060/000196/2016
Chandigarh, this the 12th day of December, 2017**

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**CORAM:HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J) &
HON'BLE MS. P. GOPINATH, MEMBER (A)**

1. Dr. Harjeet Singh son of Late Shri Buta Singh, resident of House No. 2464, Urban Estate, Phase-2, Patiala (Punjab).
2. Dr. Dharminder Singh son of Shri Kulwant Singh resident of House No. 407, Urban Estate, Phase 2, Patiala (Punjab).
3. Shri Jawahir Lal Raina, son of late Shri Shamboo Nath Raina House No. 118, Vishwabharti Coloney, Phase 2, Post Office Udhaywala Jammu J & K, 180018.
4. Dr. Mohd, Munis, son of Late Mohd. Hanif, resident of village and Post Office Bilariaganj, District Azamgarh (Uttar Pradesh) Ahmed, H. No. 228/12, Shakoor Basti, Milk Road, Malerkotla, District Sangrur (Punjab) – 148023.

....Applicants

(Present: Mr. Arjun Partap Atma Ram, Advocate)

VERSUS

1. Union of India through the Secretary, Ministry of Human Resource Development, Department of Higher Education, Shastri Bhawan, Government of India, New Delhi.
2. Union Public Service Commission through its Chairman, Dholpur House, Shahjahan Road, New Delhi – 110069.
3. Central Institute of Indian Languages, Manasagangotri, Hunsur Road, Mysore through its Director.
4. Northern Regional Language Centre, Punjabi University Campus, Patiala Punjab through its Principal.
5. Sh. Pawan Kumar son of Sh. Rakesh Kumar resident of #171/6, Ashok Vihar-I, Kapurthala (Punjab) – 144601.

....Respondents

Present: Mr. Sanjay Goyal, Advocate for Resp. No. 1, 3 & 4
Mr. B.B. Sharma, Advocate for Resp. No. 2
Mr. Deepkaran Dalal, Advocate for Resp. No. 5)

ORDER (Oral)

JUSTICE M.S. SULLAR, MEMBER (J)

1. The matrix of the facts and material, culminating in the commencement and relevant for deciding the core controversy, involved in the instant Original Application (O.A.), and exposted from the record, is that the Central Institute of Indian Languages

(for brevity, CIIL), Mysore, a subordinate office of the Govt. of India, Ministry of Human Resources and Development (in short, MHRD), was established in the year 1969, with the objective of promoting and developing Indian languages. Subsequently seven Regional Language Centres (RLCs) of the Institute, located in Mysore, Bhubaneswar, Pune, Patiala, Lucknow, Guwahati and Solan, were established to implement the three language formula of the Government of India by providing training to teachers deputed to these Centres by various State Governments. Consequently, Harjeet Singh and Dharminder Singh (Applicants No. 1 and 2) were intermittently engaged as Guest Lecturers in Punjabi, Jawahar Lal (Respondent No. 3) Guest Lecturer in Kashmiri and Dr. Mohd. Munis (Respondent No. 4) as Resource Person in teaching Urdu Language, in Northern Regional Language Centre(NRLC), Patiala, vide appointment orders (Annexure A-1 colly). Their engagements were purely on temporary basis, @ Rs.125/- per hour and not more than three hours in a day, for specific period, according to the needs arising in the NRLC at Patiala from time to time i.e. start of the academic session July to April (end of the academic session). There were periods of breaks in their engagement, when there was no need of engaging Resource Person, which usually happened during the period between the end of an academic session and the beginning of the next academic session. The applicants were not appointed against the sanctioned post in RLC and they were only intermittently engaged on payment of honorarium on a daily basis as a part of academic program as and when it was required.

2. Sequelly, in order to fill up the vacancies on regular post of Lecturers in the Institute and its RLCs, the UPSC was approached

by the Competent Authority. As a consequence thereof, the UPSC advertised various posts, including the post of Lecturer (Punjabi), vide advertisement No. 16/2014 dated 27.09.2014 (Annexure A-10) (Annexure R-2/2), calling for applications online. After following the due procedure, on the recommendations of the UPSC, one Pawan Kumar (Respondent No. 5) was appointed on the post of Lecturer (Punjabi) on regular basis, vide letter dated 03/07.09.2015 (Annexure R-5/1), but his appointment was withdrawn till the decision in Writ Petitions 13299/2013 and 23231/2014, by the Hon'ble High Court, vide order dated 21.09.2015 (Annexure R-5/2).

3. Initially, the applicants filed CWP Nos.13299/2014 and 23231/2014 titled **Dr. Harjeet Singh and Others Vs. Union of India & Others**, challenging the validity of the impugned advertisement (Annexure A-10) (Annexure R-2/2) and notice calling for interview (Annexure P-13) (therein). During the pendency of the Writ Petition, the Union of India filed CMs No. 13299/2013 and 12766/2015 in CWP NO. 23231/2014, raising preliminary question of jurisdiction, and claimed that the jurisdiction, to adjudicate the subject matter of the Writ Petition, would lie before the Central Administrative Tribunal (CAT). Therefore, the main Writ Petition was dismissed as withdrawn, with the liberty to the petitioners therein to file Original Application in this Tribunal, vide order dated 24.02.2016 (Annexure A-13 colly), by the Hon'ble High Court. In compliance thereof, the applicants have now preferred the instant Original Application (O.A.), challenging the validity of the impugned advertisement, for appointment of Lecturer (Punjabi) on regular basis.

4. The case set up by the applicants in brief, insofar as relevant, is that initially they were appointed as Guest Lecturers in their respective languages Punjabi, Kashmiri and Urdu, on hourly basis @ Rs.125/per hour and not more than three hours per day, with further stipulation that they will continue teaching till the end of the academic session i.e. up to 30th of April. They have not produced the copies of their appointment letter, containing terms and conditions of their engagement. They have only placed on record certificates (Annexure A-1 colly), in this regard. However, their services were stated to have been renewed on hourly basis. It was alleged that with reference to letter dated 12.08.2002, a policy decision was taken by the Institute, not to issue any formal order to the candidates, engaged as Guest Lecturers. However, certificates may be issued to them with regard to their engagement as Guest Lecturers in their respective subjects, subject to payment on hourly basis, for teaching work, and their engagement would continue against vacant posts in RLCs, vide letter dated 13.11.2002 (Annexure A-3), issued by the Asst. Director (Admn.) Incharge. Subsequently, the engagements of the applicants were stated to have been approved by the Selection Committee, vide letters dated 10.06.2010, 15.06.2010 & 08.07.2010 (Annexure A-4 colly). The State of Punjab was stated to have framed regularization policies dated 18.03.2011 & 17.11.2011 (Annexure A-5 & A-6). The State of Haryana has also framed such policy dated 20.08.2014 (Annexure A-7), and the respondents were stated to have framed a similar policy (Annexure A-8). The applicants have also placed on record the basic course time-table, prepared by the Institute (Annexure A-9).

5. The case of the applicants further proceeds that although they have rendered long service since the year 2001/2003/2004/2007, but the UPSC has issued the impugned advertisement dated 27.09.2014 (Annexure A-10), calling applications for appointment against the regular post of Lecturer in the NRLC at Patiala. Although, the applicants were otherwise fully qualified for the appointment to the posts, but since they have become over-age, so they did not apply, for the reason that their applications would be rejected, on the short ground of over-age alone. However, they filed representations (Annexure A-11 colly), for redressal of their grievances, but in vain.

6. Aggrieved thereby, the applicants have preferred the instant O.A., challenging the validity of the impugned advertisement, and claiming the regularization of their services, on the following grounds:-

- “(i) That the action is contrary to the judgment of the Hon’ble Supreme Court of India in Uma Devi’s case.
- (ii) That a highly inequitable situation exists qua the applicants 4 and 5 whose services are also not being regularized. The policies of regularization (Annexures A-5, 6, 7) issued in terms of Umadevi’s case all provide for regularization of person employed in the States of Punjab and Haryana who have rendered 3 years of service. The applicants being employees of the Respondent No. 1 would remain contractual whereas their counterparts employed by the States of Punjab and Haryana and the State agencies as detailed in the policies themselves would be regularized on completion of three years; service. The same is violative of Article 14 of the Constitution of India.
- (iii) That the applicants 1 and 2, by efflux of time and rendering of over 10 years of service, are today ineligible for appointment and consideration against the advertisement dated 27.09.2014 (Annexure A-5). The applicants, being otherwise qualified, would be ousted from their job by appointment of fresh recruits, who would be appointed on a regular basis to their detriment.
- (iv) That the applicants, though appointed as Guest Lecturers, (who are required to teach one hour lecture on a daily basis), are in fact, teaching multiple Lecturers on a daily basis in their respective subject, as is evident from the Time-Tables (Annexure A-9). It is submitted that by the issuance of the advertisement dated 27.09.2014 (Annexure A-10), the valuable right and consideration of the applicants for regular appointment in terms of the judgment in Uma Devi’s case would stand frustrated.
- (v) That the applicants are, in fact, deemed to working against duly sanctioned posts. The same is evident from the fact that their contractual appointments have been reviewed and renewed for

over a period of 10 years without interruption in the case of the petitioners 1,2 and 3, and for 8 and 5 years respectively for the applicants 4 and 5. On a yearly basis financial sanction is being accorded for the applicants salaries.

- (vi) That even the Hon'ble High Court in judgment titled Vivek Singh Vs. Maharishi Dayanand University" reported as 2006 (4) SCT 820 also directed that where persons have been working on a contractual basis for a long time and advertisement has been issued, the incumbent contractual employees are required to be considered preferentially by giving benefit of their experience, if regular posts are available and process of regular appointment is started. It may also be pointed out that the judgment in Gujarat Agricultural University also directs consideration of persons, who have rendered long time service on contractual basis by ignoring the fact that they are overage.
- (vii) That even otherwise the applicants in the year 2010 have participated in an All India Level Written Test and interview to once again determine their eligibility. Being successful in the same the applicants were found fully qualified for appointment. Their qualifications and eligibility to hold their respective posts has been adjudged by the respondents to be in accordance with the UGC requirement and only thereafter have the applicants been permitted to continue. Their long experience and good teaching record which would otherwise be a vital asset to the respondents would be destroyed by a single stroke of a pen. The same would be highly inequitable to the applicants who have in fact dedicated substantial part of their lives and careers to the respondent institute.
- (viii) That even otherwise the applicants are entitled to age relaxation against the impugned advertisement (Annexure A-5). By virtue of their long time contractual service rendered in the Respondent Institute the applicants 1 and 2 today are overage and cannot even apply for the one post of Lecturer Punjabi advertised vide P-10 in the Respondent Institute. It is submitted that in CWP 18431-2014 Kanwarjeet Singh Vs. UOI and others decided on 01.10.2014 this Hon'ble Court has held that in-service contractual workers who have become overage in course of service are entitled to relaxation of the age requirement. The said ratio is applicable even in the case of the applicants.
- (ix) That even otherwise the services of applicants 3,4 and 5 is required to be protected. The petitioner number 3 has also rendered over 10 years' service. There is no move to fill up either his post or the posts against which petitioner 4 and 5 are working either by regular or contractual recruitment. The law is well settled that one contractual employee cannot be replaced with another."

7. Levelling a variety of allegations, and narrating the sequence of events, in detail, in all, the applicants claimed the regularization of their services and assailed the validity and legality of the impugned advertisement (Annexure A-10) (Annexure R-2/2), in the manner, indicated hereinabove.

8. On the contrary, the respondents have refuted the claim of the applicants. The UPSC (Respondent No. 2) has filed written statement, wherein it was pleaded that there are statutory

recruitment rules of 1987 which provide legitimate method of recruitment of Lecturers through the UPSC. The applicants were neither selected for appointment in consultation with the UPSC, nor is there any provision of regularization of services of such guest teachers. The regular lecturers were to be appointed as per the statutory recruitment rules. The appointments of the applicants on hourly basis was an adhoc internal arrangement, with the understanding and stipulation that such services would not confer on them any right of regular appointment. Even, as per the provisions made under Article 320 (3) of the Constitution of India, the UPSC shall be consulted on all matters relating to methods of recruitment to Civil service and for civil posts. Even, as per para 4 of the UPSC (Exemption from Consultation) Regulation, 1958, consultation with the Commission is necessary in making appointment beyond one year. As this requirement was not fulfilled by the Government, the selection of the applicants on hourly basis and continuation beyond one year cannot be said to be proper or regular, and is therefore it is in violation of statutory recruitment rules. The maximum normal age for the post in question is 35 years, which is relaxable only in accordance with the instructions, or orders issued by the Central Govt., with respect to the persons who were employed on regular basis, that too, on production of certificate in the prescribed proforma, issued after the date of advertisement, from his employer on the office letter head to the effect that he/she is a regularly appointed Govt. servant and not a casual/adhoc/contract employee on hourly basis, as per the Recruitment Rules, and not otherwise, in view of the DoPT instructions dated 13.01.2013 (Annexure R-2/1). In this

manner, the applicants are not entitled to relaxation in age, as per the instructions (Annexures R-2/1, & 2/3).

9. Sequel, the respondents No. 1,3 & 4 filed their separate reply, pleading therein that the applicants were aware of the fact that they were engaged on temporary basis, and cannot lay any claim for being regularized, nor make any claim that their period of engagements be treated at par with that of regular faculty members. There was no sanctioned post of Guest teacher in CIIL and NRLC at Patiala, at the relevant time. The sanctioned regular posts of Lecturers, Lecturer-cum-Junior Research Officer, Reader-cum-Research Officer, Principal and Professor-cum-Deputy Director are to be filled through direct recruitment only by the UPSC, by following the recruitment rules, and not otherwise. Neither the NRLC, Patiala nor the CIIL, Mysore was competent to fill the regular post by any other method. The hourly engagements of the applicants as Guest teacher, without obtaining the approval of the Competent Authority were illegal, and improper. It was stated to have done with ulterior motive.

10. According to the respondents, the applicants were never the employees of CIIL or its RLCs. They were never engaged against any vacant sanctioned post. As per Govt. of India Rules (Annexure R-1), a post becomes deemed abolished when it is not filled up within a year of the vacancy. The post of Lecturer (Punjabi) of the Centre fell vacant w.e.f. 01.01.2004 (Annexure R-2), when the then incumbent superannuated from the post. Due to non-action of the Centre and the Institute in filling up the post, the post was abolished. The post was revived by the MHRD, Govt. of India vide their letter dated 15.02.2011 (Annexure R-3). For the reasons best

known to the then authorities of the Institute, no steps were taken earlier to approach the Ministry and the UPSC to fill up the sanctioned posts, which have been lying vacant in the Institute and the RLCs. This helped the then authorities to perpetuate the engagements of the so called guest lecturers or resource persons on hourly basis for a fixed remuneration, which were not done with the approval of the Competent Authority i.e. the Ministry, and therefore, has no sanctity. Sequel, the Ministry of HRD, vide letter dated 29.12.2009 (Annexure R-4), have declared that engaging daily wagers on workshop mode was illegal and the CIIL was asked to take remedial measures. Audit had also raised objection to the engagements of daily wagers for workshops without the approval of the Competent Authority/Ministry, vide letter 17.07.2012 (Annexure R-5). In all, the respondents claim that since the engagements of the guest teachers was on hourly basis, with a stipulation that they will not work for more than three hours a day, at a fixed remuneration, and was without the approval of the competent authority, so their services are not required to be regularized. The competent Authority has rightly referred the matter and the UPSC has correctly selected Respondent No. 5, on regular basis, on the post of Lecturer, after following the due procedure, and as per the Recruitment Rules.

11. Likewise, Respondent No. 5 (Selected candidate) has also filed a separate written statement, toeing the line of defence, as pleaded by Respondents No. 1 to 4. Instead of reproducing the entire contents of the written statement, and in order to avoid the repetition of facts, suffice it to say, that while virtually acknowledging the factual matrix, and reiterating the validity of the

impugned advertisement, and selection process, the respondents have stoutly denied all other allegations, and grounds contained in the O.A., and prayed for its dismissal.

12. Controverting the pleadings filed by the respondents, and reiterating the grounds, contained in the O.A., the applicants filed the replication. That is how we are seized of the matter.

13. Having heard learned counsel for the parties, having gone through the record, with their valuable help and after considering the entire matter, we are of the firm view that there is no merit, and the present O.A. deserves to be dismissed, for the reasons, mentioned herein below.

14. Ex- facie, the main arguments of learned counsel that since the applicants are working as guest teachers on hourly basis since long, so their services are liable to be regularized, and the impugned advertisement is illegal, are not only devoid of merits, but misplaced as well.

15. As depicted herein above, the facts of the case are neither intricate nor much disputed and fall within a very narrow compass, to decide the real controversy between the parties. Such being the position on record, now the short and significant question that arises for our consideration in this case is as to whether the services of the applicants are liable to be regularized in the given facts and circumstances of the case or not ?

16. Having regard to the rival contentions of learned counsel for the parties, to our minds, the answer must, obviously, be in the negative, in this regard.

17. As is evident from the record, that the CILL Mysore, which is a subordinate office of the MHRD, was established in the year

1969. Subsequently seven RLCs, including NRLC, Patiala, were established. The services of the Lecturers in MHRD are governed by the statutory Recruitment Rules of 1987. No post of guest teacher was in existence, at the relevant time, when the applicants were engaged as guest teacher/resource persons @ Rs.125/- per hour, and not more than three hours per day. The applicants have not produced the original engagement letters, containing terms and conditions of services, but have only placed on record certificates (Annexure A-1 colly), in this regard. There is no provision in the recruitment rules for regularization of services of such employees, who have been recruited through novel method (as in the present case), other than direct recruitment through open competition by or in consultation with the UPSC. They were never engaged by adopting the proper procedure through or in the consultation with the UPSC, as contemplated under Article 320 (3) of the Constitution of India and para 4 of UPSC Regulations, 1958. As per the specific stand put forth in the written statement of the respondents, is that the intermittent engagements of the applicants were on hourly basis at a fixed remuneration of Rs.125/- per hour, for around ten months, from the start of the academic session till the end thereof. Such hourly engagement with stipulation of maximum of three hours a day is purely a short-term internal adhoc arrangement for a limited purpose, for the academic period from July to the April.

18. Not only that, the Competent Officer of the Institute has issued guidelines (Annexure A-8), for engagement of guest lecturers, in the Centre, which postulate that for engagement of guest lecturers, the Principal shall write in the beginning of every

academic year to the Heads of Departments of Linguistics, and (b) Language of the Universities of the State concerned to send the names of suitable candidates. The Principal and two Lecturers (including one of the concerned language) will constitute a Selection Committee and this Committee will prepare a panel of names from out of the names received. The panel so prepared shall be sent to the Director, CIIL for his approval. The qualifications for the post of Lecturer shall be as per the notified Recruitment Rules of the Institute and the UGC norms of "Consistently good career with 55% marks in PG level". It has been specifically mentioned that the guest lecturers cannot be assigned the duties of Coordinators for Workshops, Seminars, Environmental tour or entrusted with any financial responsibility. They cannot be deputed for Seminars/Workshops. In this manner, even the relevant authorities have not followed the proper procedure, as contemplated under Statutory Rules/Guidelines, at the time of hourly engagements of the applicants. It is not a matter of dispute that the applicants have never worked against any sanctioned post, carrying a regular pay scale. On the contrary, they have worked for intermittent periods on hourly basis.

19. Therefore, such short term engagements on hourly basis cannot legally be termed, to be valid engagements warranting regularization of the services. Thus, it is held that hourly engagements for intermittent periods at a fixed remuneration, with a stipulation that they will not work for more than three hours a day, without approval of the competent Authority, is not only illegal, but is also against the statutory rules and guidelines (Annexure A-8). If the services of such hourly basis employees with

a fixed remuneration are regularized, then there will be no end to it.

20. Possibly, no one can dispute that the Hon'ble Apex Court in Uma Devi's case (supra) has given a liberty to formulate a policy (one time) for regularization of those persons, whose appointment were somewhat irregular (not illegal) and who have continued to work for 10 years or more, in duly sanctioned posts, as one time measure. But the same will not come to the rescue of the applicants, as their intermittent engagement has been held to be against the statutory rules & guidelines, and illegal. Moreover, no such one-time policy was formulated by the Central Govt. The mere fact that the Punjab Govt. and Haryana Govt. formulated a one-time regularization policy (Annexures A-5 to A-7), ipso facto, would not be applicable to the applicants, as they are neither the employees of the Punjab Govt. nor the Haryana Govt. Therefore, the intermittent hourly services of the applicants are not liable to be regularized, as claimed by them. This matter is no more *res integra* and is now well settled.

21. An identical question of law came to be decided by the Hon'ble Apex Court in the case **State of Rajasthan Vs. Daya Lal**, 2011 (2) SCC 429 wherein it has been held that the High Court in exercise of power under Article 226 of the Constitution of India will not issue directions for regularization, absorption or permanent continuance, unless the employees claiming regularization has been appointed in pursuance of a regular recruitment in accordance with the relevant rules in an open competitive process, against sanctioned vacant posts. Again, the Hon'ble Supreme Court in the case of **Secretary to Government, School Education**

Department, Chennai Vs. R. Govindaswamy and others 2014 (4)

SCC 769, has ruled that temporary, adhoc or daily wage services for a long number of years will not entitle such employee to claim regularization if he is not working against a sanctioned post. The same view was reiterated by the Hon'ble High Court of Judicature at Madras in the case of **Union of India & Another Vs. Dr. Kaipash Ben T. Solangi & Others** (W.P. No. 7672 and 7673 of 2014 decided on 21.11.2014).

22. As indicated hereinabove, with an eye to appoint a regular lecturer, the Competent Authority has issued an advertisement (Annexure A-10) (Annexure R-2/2). As per clause 8 thereof, one post lecturer, Punjabi (UR) at NRLC Patiala under CILL, Mysore, was advertised. However, it was mentioned that the post is also suitable for physically challenged person with disability. The age prescribed was 35 years, besides educational qualification mentioned therein. It is not a matter of dispute that the applicants Nos. 1 and 2 were over age, and were not eligible to apply for the regular post of lecturer, in pursuance of the impugned advertisement.

23. Sequelly, the arguments of learned counsel that the applicants are entitled to relaxation in age, in view of their experience, cannot possibly be accepted, in view of DoPT instructions dated 13.01.2003 and 27.03.2012 (Annexure R-2/1 and R-2/3), which clarified that age relaxation to the Govt. servants apply only to the Central Govt. employees, appointed on regular basis, according to the relevant Recruitment Rules. Therefore, this benefit is not admissible to those employees, who were engaged on short term, on hourly basis or likewise. Moreover

once the appointments/engagements of the applicants are held to be illegal, then their claim for age relaxation and regularization pales into insignificant and becomes baseless.

24. Therefore, thus seen from any angle, the applicants are neither entitled to regularization of their services, nor relaxation in age. Thus, the contrary arguments of learned counsel for the applicants deserve to be and are hereby repelled, under the present set of circumstance. On the other end, the ratio of law laid down in the indicated judgments, *mutatis mutandis*, is applicable to the instant controversy, and is complete answer to the problem in hand. As a consequence thereof, it is held that the Competent Authority has rightly selected Respondent No. 5 for the post of Lecturer, on the recommendations of the UPSC, after following the due procedure, as per the Recruitment Rules, in the obtaining circumstances of the case.

25. No other point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

26. In the light of the aforesaid prismatic reasons, as there is no merit, the instant O.A. is hereby dismissed as such. However, the parties are left to bear their own costs.

(P. GOPINATH)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)

Dated: 12.12.2017

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