

**Central Administrative Tribunal
Principal Bench**

OA No.726/2014

Reserved on : 18.09.2019
Pronounced on : 15.10.2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)**

1. Shri Harjeet Singh Chadha
S/o Sh. Darshan Singh Chadha
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2. Shri Mahesh Kumar Saini
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3. Ms. Richa Kaushik
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7. Shri Rakesh Kumar
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8. Mr. Gulzar Ahmad
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10. Mrs. Sakshi Verma
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11. Mr. Aditya Tandon
S/o Dr. Asha
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12. Mr. Mohit Wadhwa
S/o Sh. Satish Kumar Wadhwa
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13. Ms. Mimansa Gulati
D/o Sh. Surinder Gulati
2/58, Shivaji Nagar,
Gurgaon, Haryana 122001.
14. Mr. Shashank Saroop
S/o Late Ram Saroop
57/4406, Reghar Pura, Karol Bagh,
New Delhi 110 005. ... Applicants.

(By Advocates, Shri K. C. Mittal with Ms. Ruchika Mittal)

Versus

Govt. of NCT of Delhi through

1. Chief Secretary
Delhi Secretariat
IP Extension
Delhi.

2. Secretary
Directorate of Higher Education
“B” Wing, 5 Sham Nath Marg,
Govt. of NCT of Delhi
New Delhi.
3. Principal
Ch. Brahm Prakash Govt. Engineering College,
Jaffarpur,
New Delhi 110 073.
4. Union Public Service Commission
Dholpur House,
Shahjahan Road,
New Delhi 110 003. ... Respondents.

(By Advocates, Mr. Anuj Kumar Sharma)

: O R D E R :

Justice L. Narasimha Reddy, Chairman :

This OA is being heard and disposed of, for the second time after remand by the Hon'ble High Court of Delhi. Initially, it was decided on 31.07.2018, and aggrieved by the order passed in the OA, the applicants filed W.P. (C) No.9316/2018. The applicants pleaded that some of the specific grounds raised in the OA, particularly the one, pertaining to regularization by setting up a committee were not discussed. Another contention was that their appointment deserves to be treated as the one made on regular basis, and even that was not dealt with in detail.

2. The relevant facts are that, the applicants were appointed as Lecturers in various Colleges of Engineering, in the Higher Education Department of GNCT of Delhi in

the year 2010, initially, for a period of one year, extendable for a maximum period of three years. The rules governing the service conditions of the teaching staff in the engineering colleges were framed in June, 2012. Immediately thereafter, the vacancies were notified to the UPSC, the agency that was conferred with the power to select and recommend the candidates. Advertisement No.05/2014 was issued in 2013-2014. The applicants filed this OA by claiming the reliefs mostly on the basis of Article 239 AA of the Constitution of India. However, the relief now is confined only to the one in paragraph 8 (a) and (b), namely, to quash and set aside the advertisement issued in 2013-2014, and to direct the UPSC not to proceed with the selection process of recruitment to the post of Lecturers, and to consider the case of the applicants for Lecturers.

3. The applicants contend that they have been appointed after issuing an advertisement, and on being assessed by a committee, and the same fits into the procedure prescribed under the rules. They contend that in case the respondents want the approval of these appointments by UPSC, necessary steps can be taken in that behalf and there was absolutely no basis for initiating steps for direct recruitment for those very posts. Another contention is that the Government of Delhi has evolved a scheme for

regularization of the employees appointed on contractual basis vide Memo dated 16.02.2015, and the benefit thereof was not extended to the applicants. Reliance is placed upon several judgments rendered by the Hon'ble Supreme Court and Hon'ble Delhi High Court.

4. The respondents filed the counter affidavit opposing the OA. It is stated that the engagement of the applicants through contractual basis was purely stop gap arrangement, pending framing of the rules and making of regular appointments. It is stated that hardly within three years from the date of engagement of the applicants on contractual basis, the rules were published and advertisements were issued. It is stated that the Hon'ble Supreme Court deprecated the practice of engagement of employees on contractual basis against regular vacancies and regularization thereof and the exceptions carved out were only in cases where the appointments continued beyond decades together. It is also stated that in an Institution like the Engineering College, teaching can be ensured only when suitable candidates are selected after issuing a broad based advertisement and that a walk-in-interview cannot be a substitute for this. It is stated that the engagement of the applicants cannot be treated as the one on regular basis, and though there existed a proposal

at one stage for framing schemes for regularization of certain employees engaged on contractual basis, no such scheme was framed in respect of employees in engineering colleges.

5. We heard Shri K. C. Mittal with Ms. Ruchika Mittal, learned counsel for the applicants and Shri Anuj Kumar Sharma, learned counsel for the respondents.

6. Though the applicants made an effort to challenge the very validity of the recruitment rules, they have given up the same. The issues now to be dealt with are as follows:-

- (a) whether the appointment of the applicants as Lecturer on contractual basis can be treated as the one on regular basis;
- (b) whether the steps initiated by the UPSC for selection of Lecturers on regular basis can be stalled; and
- (c) whether there exists a scheme for regularization of the Lecturers of Engineering Colleges appointed on contractual basis.

7. Before commencement of the discussion, it needs to be noted that though the OA was filed by as many as 14 contractual Lecturers, it is brought to our notice that substantial number of them have left the service, obviously in view of getting a better or regular employment.

8. The Delhi Government established Engineering Colleges in the year 2007. However, by that time, the Recruitment Rules were not in place and regular appointments could not be made. The Institutes were started by availing services of teaching staff from other Institutes. In the years 2010 to 2013, the applicants herein were engaged on contractual basis for a period of one year, extendable for a maximum period of three years. Few important clauses contained in a typical order of appointment read as under:-

- “1. The above appointments will be upto 29.02.2012 or till the post is filled on regular basis through UPSC whichever is earlier. The Contract will automatically terminate on 29.02.2012.
- 6. The appointee will not be entitled to Government Residential accommodation or HRA in lieu thereof.
- 12. The contractual employee has no right for extension/continuation of contract after 29.02.2012.

The reasons for engaging the Lecturers on contractual basis appear to be that the Recruitment Rules were not framed by that time. The Recruitment Rules were notified on 29.06.2012, and soon thereafter the selection and recruitment was entrusted to UPSC. The prayers made in paras 8 (a) & (f) were pressed, and permitted by the Hon'ble Delhi High Court. They read as under:-

- “(a) Quash and set aside the recruitment process pursuant to advertisement No.5/2014 at Serial

No.5, Advertisement No.19/2013 at Serial No.9 and 10, Advertisement No.20/2013 at Serial No.18 and Advertisement No.01/2014 at Serial No.4 issued by the UPSC and not to proceed or make any recruitment against the posts held by the applicant from any source or method and consider the cases of the applicants for regularization as per the direction of the Hon'ble Court of Delhi and/or the decision of the respondents to regularize applicants.

(f) Hold and declare that the recruitment process initiated for the post in question by the UPSC pursuant to the impugned Recruitment Rules is illegal, arbitrary, unconstitutional and violative of Article 14 & 16 of the Constitution and without authority as such liable to be quashed and set aside.”

9. The occasion to interfere with the advertisement would arise, if only, it was issued by an agency not competent to do so. Under the Recruitment Rules, the selecting agency is the UPSC. The first selection after framing of the rules and establishment of the Colleges was taking place. The applicants, however, insist that they alone should be selected. It hardly needs any emphasis that the level of efficiency of teachers in the Engineering Colleges is required to be very high and the best hand can be procured only when selections are made on a broad based advertisement, and through a competent agency like the UPSC. What was issued when the applicants were appointed on contractual basis was a “walk-in-interview”. The typical advertisement reads as under:-

“WALK-IN-INTERVIEW

(For engagement n purely contract basis)

The walk-in-interview for the following posts of Ch. Brahm Prakash Government Engineering College, Jaffarpur, New Delhi, 110 073, established under the Department of Training & Technical Education, will be held at Department of Training & Technical Education, Muni Maya Ram Marg, Pitampura, New Delhi 110 088 as per schedule mentioned against the discipline. The engagement will be on purely contract basis upto 28.02.2013 or till the posts are filled up on regular basis through UPSC, whichever is earlier.”

The UPSC was not involved at any stage. It was clearly mentioned therein, that the engagement will be till the posts are filled up through UPSC. The candidates who participated in such a selection cannot ignore that very stipulation. Even if, the respondents skip over the issue, the Colleges and the students cannot be deprived of the services of the teachers, selected through the prescribed procedure. When written tests are conducted on very high standards even for Primary and Trained Graduate Teachers in the government schools, the Engineering Colleges cannot be left at the mercy of the persons who could make it through a walk-in-interview. The judgment of the **Secretary, State of Karnataka and Ors. vs. Umadevi and Ors.** (2006) 4 SCC 1, needs to be taken note of, in this behalf.

10. The subsequent judgments of the Hon'ble Supreme Court, and Delhi High Court in **Sonia Gandhi & Ors. vs.**

Government of NCTD & Ors. (W.P. (C) No.6798/2002 decided on 06.11.2013) were in the context of enforcing the exception carved out therein, namely, to frame a scheme for regularization of the employees who continued in service on contractual basis for a period exceeding ten years. In the instant case, the applicants served the Institutes hardly for two-three years, by the time the advertisement was issued. Added to that many of them have already left the service.

11. There are instances where appointments made otherwise than through the regular process were also treated as holding good for the purpose of continuation. The oft quoted judgment in this behalf is of the Hon'ble Bombay High Court, in **Sachin Ambadas Dawale and Ors. vs. The State of Maharashtra & Anr.** (Writ Petition No.2046/2010 decided on 19.10.2013). As a matter of fact, it was recorded therein that the appointment of the petitioners in that case was in pursuance of a broad based advertisement, and by a properly constituted selection committee. The only difference was that, in the orders of appointment it was mentioned that it was purely ad hoc in nature. It was also mentioned that as a policy evolved in July 2002, the State Government has decided that the appointment shall be treated on contractual basis till the

completion of selection process. The fact that the Selection Committee was constituted by the government through its resolution dated 02.08.2003, and it comprises of the Joint Director of Technical Education, Lady representative, Principal of the concerned Institute, Representative of backward classes (Engineering Graduate) and two experts of the concerned subject, was taken note of. The advertisement was also found to be very broad in its appeal. The case in hand is totally different. Purely ad hoc and temporary measures were taken pending finalization of the recruitment rules. Their appointment had no attributes of regular appointment at all. Therefore, we do not accept the contention of the applicant.

12. In ***Union Public Service Commission vs. Girish Jayanti Lal Vaghela and Others*** (2006) 2 SCC 482, the Hon'ble Supreme Court held as under:-

“21. It is neither pleaded nor is there any material to show that the appointment of Respondent 1 had been made after issuing public advertisement, or the body authorized under the relevant rules governing the conditions of service of Drugs Inspectors in the Union Territory of Daman and Diu had selected him.”

The same situation obtains in the instant case. Hence, the 1st issue is answered against the applicants.

13. The second question is about the legality of the steps initiated by the UPSC. The advertisement was issued for

the purpose of selecting candidates for appointment to the post of various categories, i.e., Assistant Professor (Engineering) of various branches. Except stating that they are entitled to be regularized, the applicants are not able to state that the advertisement suffered from any legal or factual infirmity. The Government as well as the UPSC are entrusted with the duties to make timely appointments to the teaching posts, so that the teaching in the Colleges does not suffer. On account of the interim orders obtained by the applicants, way back in the year 2014, the entire selection process has come to stand still. Some of the applicants have already left the service. The applicants cannot be permitted to take the Institutes almost like a hostage.

14. In ***Uma Devi's case (supra)***, the Hon'ble Supreme Court directed that as a one-time measure, Schemes can be evolved for regularization of the employees who continued for a period exceeding 10 years against the sanctioned posts. With a view to implement the same, the Delhi Government issued a Memo dated 16.02.2015, which reads as under:-

"Memo dated 16.02.2015

The Government of N.C.T. of Delhi would like to take a view on the existing policy regarding status of contractual employees engaged in various

departments and organizations under the Government.

Therefore, services of Contractual employees engaged by the departments should NOT be terminated till further instructions in the matter. If any terminations are likely to take place, the same should be stopped till further orders.”

The benefit thereunder can be only to those who have continued for a period, exceeding ten years, against the regular vacancies. By the time the advertisement was issued, the applicants did not continue for that long a period. It is also not known whether any scheme has been evolved for the purpose of regularization of the contractual Lecturers in GNCTD. The issue is accordingly answered in the negative.

15. We may add here that the Delhi Medical Service was constituted almost at the same time as the service rules for the Engineering Colleges were framed. Quite large numbers of Doctors were working on contractual basis. Once the rules were framed, all of them were subjected to the selection process by the UPSC. Though they approached the Tribunal and the High Court, none of them were directed to be regularized straightway. Whether such a facility existed in this case depends upon the representation which the applicants can make and the decision which the Government may take. However, since quite large numbers of posts of Assistant Professors are

lying vacant, the selection process which was substantially stalled almost for five years cannot be stalled any longer. We answer the 3rd issue accordingly.

16. We, therefore, dismiss the OA holding that

- (a) the appointment of the applicants on contractual basis cannot be equated to regular appointment;
- (b) the steps initiated by the UPSC for recruitment of Assistant Professors in the Engineering Colleges do not suffer from any illegality or factual infirmity.

We, however, leave it open to such of the applicants who are still in service on contractual basis, to approach Delhi Administration for their continuation or regularization. If by the time, the UPSC completes the selection process, no decision is taken by the Delhi Administration in that behalf, it shall be open to the applicants to approach this Tribunal again.

There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/pj/