SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

***** Vs. State of Haryana and Others**

***** Vs. State of Haryana and Others**

SooperKanoon Citation : sooperkanoon.com/1058393

Court : Punjab and Haryana

Decided On : Jan-25-2013

Appellant : ***

Respondent : State of Haryana and Others

Judgement :

C.W.P.No.16411 of 2011 -1- IN THE HIGH COURT OF PUNJAB AND HARYANAAT CHANDIGARH C.M.No.5149 of 2012 and C.W.P.No.16411 of 2011 Date of Decision:- 25.01.2013 Vandana Gumber ....Petitioner(s) versus State of Haryana and others ....Respondent(s) *** CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH *** Present:- Mr.Shyam Mooranjit and Mr.Sunil Chadha, Advocates, for the petitioner.

Mr.Harish Rathee, Sr.DAG, Haryana.

*** AUGUSTINE GEORGE MASIH, J.

C.M.No.5149 of 2012 Written submissions along with Annexures A to C are taken on record.

C.M.stands disposed of.

Main Case.

Petitioner, who was appointed as a guest faculty Lecturer in the subject of Psychology in Government College for Women, Sector 16, Faridabad, has approached this Court impugning order dated 27.7.2011 (Annexure P-10) relieving her from the post on the ground that the workload was not available for her.

Faced with a situation that there were various posts of Lecturers in the College in different subjects lying vacant and in the absence of C.W.P.No.16411 of 2011 -2- regular selection, study of the students is suffering, the Financial Commissioner and Principal Secretary to Government of Haryana, Department of Education issued memo.

dated 23.7.2007 granting permission to the Principals of the Colleges to make contractual appointments on the posts of Lecturers (College Cadre).Principal of Government College for Women, Sector 16, Faridabad, after constituting a Committee and calling applications from the candidates, appointed the petitioner to the post of Lecturer Psychology Guest Faculty on 28.8.2008.

It has been asserted by the petitioner that she had been teaching subjects of Psychology, Psychology related Management subjects, Environmental Science subjects to Bachelor of Arts (BA).Bachelor of Business Administration (BBA) & Bachelor of Journalism and Mass Communication (BJMC) from August 2008 to July 2010.

For the Session 2010-2011, these subjects were not allotted to her for teaching on the ground that there was change in the academic course.

As a matter of fact only one subject i.e.Personnel Management was removed from the curriculum whereas other subjects remained the same.

Despite there being no regular selection made and workload being available in the College, petitioner was threatened by the earlier Principal of the College that she will be relieved from the post.

Petitioner, along with two other teacheRs.made a complaint against the Co.ordinator of the BBA Programme and the then Principal to the Higher Authorities in which allegations were made for harassment and humiliations

suffered at their hands.

The matter was also taken to the National Commission for Women, New Delhi.

The Co-ordinator of the BBA Programme had tendered written apology and the Principal of the C.W.P.No.16411 of 2011 -3- College nurtured a grievance in the wake of these proceedings and was transferred.

The incoming Principal-respondent No.4 became hostile to the petitioner and had been finding ways and means to trouble her.

Faced with this situation, petitioner approached this Court by filing CWP No.12888 of 2010 which was dismissed as premature vide order dated 23.7.2010 (Annexure P-9/A) on the ground that no adveRs.order had been passed against the petitioner till then.

Petitioner continued to serve as guest Lecturer in the College.

Since January, 2011, she was teaching subjects of Organizational Behaviour, Personality and Soft skills development to BBA classes along with Psychology and Environment Studies (Eversus of BJMC whereas Human Resource Management & Research Methodology which are also Psychology related Management subjects, were not given to her, which she had been teaching earlier.

The new session commenced on 1.7.2011 and vide order dated 22.7.2011, petitioner was relieved by respondent No.3- Principal of the College on 27.7.2011 (Annexure P-10) on account of no workload which order is impugned by her.

It is the contention of the counsel for the petitioner that this relieving order is contrary to the facts and is motivated with a mala fide intention to remove the petitioner by all means.

Petitioner had been teaching job oriented courses which had direct connection with the subjects of Psychology and Management and since the petitioner possesses the requisite qualifications, as per the UGC regulations, she was fully qualified to teach the said subjects which had been taken from her which was done only with an intention to remove her from service.

Lecturers/Associate Professors and Readers having the same qualification as that of the C.W.P.No.16411 of 2011 -4- petitioner are teaching Psychology and Psychology related Management subjects at faculty of Management Studies, Delhi University to BBA as well as to MBA students (regular and part-time).He has tried to project from the time table of the College that there was many periods and subjects which relate to Psychology and Management and there being no teachers for the said subject, petitioner could have easily taught them and the workload would have been available which would entitle her to be retained as a guest Lecturer.

As per the memo.

No.8/36-2008 C-1(5) dated 31.3.2010 which has been issued by the Financial Commissioner & Principal Secretary, Higher Education, Haryana, only those guest faculty Lecturers were to be relieved who have less than 50% of the workload.

Vide letter dated 20.8.2010, it was further clarified that the revised provision of 27 periods per week was the requisite workload, 50% of which would come to 13 periods per week.

She had been relieved in violation of these instructions as the workload was available.

He contends that a guest faculty Lecturer is appointed for a whole academic year and the workload was assessed at the beginning of the session.

Based on that, petitioner was continued as a guest faculty Lecturer and joined on 1.7.2011 and it is thereafter that a Special Committee was constituted with a mala fide intention to remove her, which gave its report that there was no workload available in the College and acting on the same, she has been wrongly relieved from service.

As a matter of fact, on relieving the petitioner, two persons, namely, Ms.Sangeeta and Ms.Leena Rani under a newly coined post Extension Lecturer.

were engaged to replace the petitioner.

It is well settled that all employees C.W.P.No.16411 of 2011 -5- whether ad hoc or contractual can be replaced only by regular employees and not by resorting to similar temporary arrangement and, therefore, the action of the respondents cannot sustain.

There is no change in workload, strength of students, syllabus and number of classes per week.

The foundation for passing the impugned order suffers from factual and legal malice and is a result of negative attitude of respondent No.4-Principal of the College and, therefore, the impugned order deserves to be quashed.

An assertion has been made that no show cause notice or opportunity of hearing was given to the petitioner before relieving her which has resulted in violation of the principles of natural justice rendering the action of the respondents illegal.

On these grounds, the impugned order, it is claimed by the counsel, cannot sustain and deserves to be set aside.

Counsel for the respondents, on the other hand, submits that the allegations of mala fide have been made against respondent No.4 but there is no incident or the basis made out in the writ petition which can be termed as a legal or a personal malice against the petitioner.

The allegations, if any, could have been attributed to the earlier Principal of the College who admittedly stands transferred from the College and in the absence of any factual basis for making such allegations, it can only be said that it is based upon mere fiction of the petitioner.

He contends that the admission of the petitioner is clear and categoric that she was engaged as a guest faculty Lecturer in Psychology on the basis of workload/period basis available with the College.

There was a change in the syllabus in the couRs.of BBA and BJMC which led to reduction in the workload in the subject of Psychology and there being no workload in the subject for which the petitioner was C.W.P.No.16411 of 2011 -6-

engaged, the Principal of the College did not have any option but to relieve her.

In pursuance to the communication received from the Financial Commissioner and Principal Secretary, Higher Education, a Committee was constituted on 22.7.2011 to assess the workload for each guest faculty Lecturer, which submitted its report on 25.07.2011 (Annexure R-2).On the basis of this report, where it was said that there was no workload available for the petitioner, she was relieved from service on 27.7.2011.

He submits that as per letter dated 20.8.2010 of the Financial Commissioner, Higher Education, Haryana, hours of working per day for Lecturers as per the UGC norms were increased from 5 to six houRs.Lecturers teaching under Graduate classes with practical subjects, who were earlier teaching 27 periods a week, were not required to teach 33 periods in a week.

Because of this development, regular Lecturers already working were assigned more periods which resulted in reduction of workload for the guest faculty LectureRs.There were two regular Lecturers working in the College.

The workload for the subject of Psychology of various classes was assessed at 57 periods per week.

Since 33 periods per week was the norms fixed for each Lecturer, these two regular Lecturers could take 66 periods in a week.

Their workload was thus short by 9 periods per week.

In the light of this factual position, petitioner had no workload and, therefore, could not be retained in service.

As regards allegations that the petitioner had been replaced by other two guest faculty LectureRs.namely, Ms.Sangeeta and Ms.Leena Rani by terming them as Extensive Lecturers., he asserts that as a matter of fact, they have been appointed on per period basis for teaching Commerce subjects.

He asserts that at the relevant time, 1st , 3rd and 5th C.W.P.No.16411 of 2011 -7- semesters of BJMC were running in the College.

As per the syllabus of Maharishi Dayanand University, Rohtak, for these three semesteRs.the subject of Psychology was not prescribed in the syllabus as one of the subjects.

In the 2nd, 4th and 6th semesters of BJMC, which were to commence in January, 2012, in these three semesters only six periods of Psychology would be available to be taught in a week which could easily be taken up by the two regular Lecturers in Psychology, who were already posted there and their workload was 57 periods and adding these 6 periods thereto, would still leave them three periods short of the required 66 periods workload.

He asserts that the claim of the petitioner that she was teaching subjects of Business Research Methodology, Business Communication, Marketing Management and Human Resource Management etc.is against the UGC norms as she is only eligible to teach Psychology under the Rules.

She might have been teaching these subjects as a shift arrangement but not as a regular teacher.

Petitioner was not allotted the periods of Management in BBA and BJMC as she was neither appointed to teach these subjects not was she eligible as she had been appointed and was eligible to teach subjects of Psychology alone.

As a matter of fact in the session 2010-2011 also, petitioner was assigned only three periods in a week of Psychology for most of the session and the same was done in accordance with the Rules.

He asserts that the admission for the academic session 2011-2012 was started from 1.7.2011 to 15.7.2011 without late fee and thereafter from 16.7.2011 to 31.7.2011 with late fee.

He, on this basis, contends that the assertion of the petitioner that the workload was assessed and thereafter she was allowed to join on 1.7.2011 is not sustainable.

Petitioner was working C.W.P.No.16411 of 2011 -8- as a guest faculty Lecturer on workload/period basis and since the workload was not available, as a matter of fact it was assessed as nil workload.

Petitioner could not be retained in service and, therefore, was not required to be given any notice prior to relieving her.

Reference has been made to Annexure R-8 to contend that it was made clear to the candidates at the time of interview that the engagement as guest faculty was purely temporary and can be terminated at any time without assigning any reason.

Here the petitioner was working in the same College and was aware of the factual position and, therefore, the action of the respondents is in accordance with law.

On consideration of the submissions made by the counsel for the parties and going through the records of the case, I am of the opinion that the claim made by the petitioner in the present writ petition cannot be accepted and the action of the respondents is in accordance with law for the reasons that the engagement of the petitioner as a guest faculty Lecturer was for the subject of Psychology.

Her engagement was on the basis of workload/period basis available with the College as per the policy decision of the Government of Haryana dated 23.7.2007.

Engagement of the petitioner was purely on contract basis wherein it was clearly specified that the same could be terminated at any time without assigning any reason.

However, this clause would not entitle the respondents to terminate the services of the petitioner without any justification and, therefore, such an act is open to judicial review by the Court and for judging the action of the respondents as to whether it was just and reasonable, the explanation as put forth by the respondents for relieving the petitioner vide the impugned order C.W.P.No.16411 of 2011 -9- dated 27.7.2011 (Annexure P-10) has been gone into and is found satisfactory.

The memo.

dated 20.8.2010 was received from the Financial Commissioner and Principal Secretary to Government of Haryana, Higher Education by the Principal of the College, according to which working hours per day for the Lecturers were increased from 5 to 6 houRs.Lecturers of under Graduate classes with practical subjects were not required to teach 33 periods in a week instead of earlier 27 periods.

Norms earlier fixed for a Lecturer per week were 27 periods but with this increase, the regular Lecturers already working were to be assigned more periods, which would reduce the workload of the guest faculty LectureRs.Although as per the letter dated 31.3.2010 of the Financial Commissioner and Principal Secretary, Higher Education-respondent No.1, guest faculty Lecturers who had less than 50% of the workload were to be relieved and the same would not come to 16 and a half lectures per week.

An exercise was carried out by forming a Committee on 22.7.2011 (Annexure R-1) to assess the workload of the guest faculty Lecturers and submit its recommendation to the Principal, Government College for Women, Faridabad at the earliest.

It would not be out of way to mention here that one of the members of the Committee was Smt.Siloni Verma, who was the head of the Department of Psychology.

This Committee submitted its report on 25.7.2011 (Annexure R-2).according to which workload of the petitioner was reviewed and it was found that there is no class that can be assigned to her in any of the four faculties in the running semester i.e.BA, BBA, BJMC & B.Com.

It was further stated therein that there are two regular teachers in the Department of Psychology and they can manage the C.W.P.No.16411 of 2011 -10- workload related to Psychology prescribed in BJMC in the coming semester as well.

Thereafter, an Expert Committee was constituted under the Chairpersonship of the Principal of the College which considered the report of the workload/Review

Committee.

The proceedings of the Expert Committee are appended as (Annexure R-3) and the relevant portion thereof reads as follows:- The Workload Review committee has recommended that there is sufficient workload for the following persons:- 5.

Sh.

S.C.Sharma 6.

Ms.Roopam Dora 7.

Ms.Poonam Almadi 8.

Sh.

Shyam Bhadra Hence, it has been decided to continue the services of above stated Guest Lecturers for the coming semester.

The Workload Review Committee has recommended that there is no workload for Ms.Vandana Gumber and no classes of any faculty can be assigned to her.

This expert committee has also gone through the terms and conditions of the contract for the Guest LectureRs.The committee has also gone through the letter of Financial Commissioner cum Principal Secretary to Govt.

Haryana, Education Department No.8/36-2008 C-I(5) dated 31.3.2010.

There is change in the syllabus by M D University and Psychology subject and Psychology related papers are not to be taught in the I, III and V semester of BBA.

There is rationalization of workload of regular faculty of college lecturers by C.W.P.No.16411 of 2011 -11- Govt.

of Haryana vide letter no.22/56-10 C-I(1) dated 20.8.2010.

Regular faculty members are to meet 33 periods instead of 27 periods in this semester.

In the revised syllabus for BJMC of MD University, Rohtak, Psychology or Psychology related subjects are not there.

Keeping in view the above circumstances the above committee is of the opinion that there is no workload at all for Ms Vandana Gumber, Guest Lecturer in any of the faculties in this college.

Hence, it has been decided to relieve Ms Vandana Gumber as Guest Lecturer from this college with immediate effect.

Sd/- Ms Bimla VishNo.(Associate Professor) Dr.

Nisha Wadhwa (Associate Professor) Sd/- Principal Govt.

College for Women, Faridabad Dt :

27. 7.2011.

A perusal of the above would show that the Expert Committee had not only gone through the report of the Workload Review Committee but had further gone into the details to assess and evaluate the correctness of the report and thereafter given a finding with regard to there being no workload available against which the petitioner could be continued as a guest faculty Lecturer in Psychology.

Workload statement for the Session 2011-2012 of Government College for Women, Faridabad in the subject of Psychology has also been placed on record as Annexure R-4 which further fortifies the findings of the Expert Committee with regard to non- C.W.P.No.16411 of 2011 -12- availability of any workload on which the petitioner could be continued.

It would not be out of way to mention here that these proceedings of the Expert Committee were forwarded to respondent No.1, which report has also been accepted by the said Committee finding it to be correct.

Since there were two regular Lecturers in the Department of Psychology and with the increased number of periods per week for the subject of Psychology, they could take upto 66 periods in a week.

The workload in the subject of Psychology being only 57 periods per week, which could be easily managed by two regular LectureRs.there being no period left to teach for a guest faculty Lecturer, the petitioner could not have been continued in service.

Even for the session which was to commence in January, 2012, there would have been an increase of only six periods which could also be taken over by the two regular Lecturers in Psychology.

Factually, the position depicted by the respondents in the reply justified the relieving of the petitioner from service.

The assertion of the petitioner that she has been replaced by two guest faculty LectureRs.namely, Ms.Sangeeta and Ms.Leena Rani is also not correct as they have been engaged to deliver lectures (per period basis) and that too in the subject of Commerce.

Since the petitioner was a Lecturer in Psychology, she could not teach Commerce subject and there can be no comparison between the petitioner and these two annually engaged extension LectureRs.It has been clearly depicted in the reply filed by the respondents that the petitioner was appointed as a guest Lecturer in Psychology and under the Rules for appointment, she could only teach the C.W.P.No.16411 of 2011 -13- Psychology subject.

Assertion of the petitioner that she had been teaching subjects of Business Research, Methodology, Business Communication, Marketing Management and Human Resource Management etc.has been explained by asserting that she could not have taught these subjects on regular basis but were given to her as a make shift arrangement otherwise it would have been in violation of the Rules.

If that be so, even if she had been teaching those subjects that being in violation of the Rules cannot confer any right on her to continue as a guest faculty Lecturer in Psychology when the subjects she had taught were not Psychology for which she was engaged.

Allegations of mala fides against respondent No.4-Principal of the College have been presumed by the petitioner thinking that the outgoing Principal, who sought transfer on serious complaints and allegations levelled by the petitioner and two other lady guest faculty LectureRs.had poisoned the mind of respondent No.4 against the petitioner.

Respondent No.4, on the basis of this feedback, had become hostile to the petitioner and had always been finding ways and means to trouble her and ultimately relieved her by passing the impugned order dated 27.7.2011.

These allegations are mere fictions and are not based on any facts.

Rather as per the reply filed by the respondents, the relieving order of the petitioner has been found to be fully justified and in accordance with law.

None of the grounds which have been pressed into service by the petitioner has been found to carry any weight which could persuade this Court to accept that the impugned relieving order of the petitioner dated 27.7.2011 was either effectuated because of mala fides or was not in consonance with law.

C.W.P.No.16411 of 2011 -14- In view of the above, finding no merit in the present writ petition, the same stands dismissed.

January 25th , 2013 (AUGUSTINE GEORGE MASIH) poonam JUDGE

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com