

Before Rajbir Sehrawat, J.

IQBAL PREET KAUR AND ANOTHER—Petitioners

versus

PANJAB UNIVERSITY AND OTHERS—Respondents

CWP No.24715 of 2017

December 02, 2021

Constitution of India, 1950—Arts.226 and 227—UGC Regulations—Denial of benefits of Senior Scale/Associate Professor—Ignorance of ad hoc/temporary service period including summer break followed by regular service—Held, even for terminating temporary appointment, one month prior notice was required—Service of petitioner was never formally terminated—There was no break in service of the Petitioner—Mere denial of salary cannot be taken as break in service—Once the break period is condoned, the respondents ought to grant benefits of the said period of service in temporary appointment for the purpose of grant of service scale and selection grade—Further even as per UGC, the Petitioner fulfilled all the conditions—Petition allowed.

Held that, once the respondents themselves have condoned the break period even for the purpose of protection of pay and grant of increments, then there is no justification left with the respondents not to grant the benefit of the said period of service in temporary appointment for the purpose of grant of Senior Scale and Selection Grade. On this count, as well, the petitioners are entitled to the benefit of counting of their previous service for the purpose of Senior Scale and the Selection Grade.

(Para 8)

Further held that, still further, a perusal of the UGC scheme and of the records of the petitioners shows that the petitioners fulfill all the conditions as required under Clause 8.0.0 and up to the Clause 8.6.0 (b) even as per the respondents.

(Para 9)

Sameer Sachdeva, Advocate
for the petitioners.

None for respondents No.1 to 3.

R. S. Dadwal, Advocate for

Aman Chaudhary, Advocate
for respondent No.4.

RAJBIR SEHRAWAT, J. (Oral)

(1) The petitioners have filed this petition under Articles 226/227 of the Constitution of India, praying for issuance of an appropriate writ for quashing the impugned speaking order dated 25.09.2017 (Annexure P-17) and all incidental proceedings passed by the respondents in withholding the benefits of Senior Scale/Selection Grade and Associate Professor Grade from due date to the petitioners, whereby the ad-hoc/temporary service period from 27.08.2001 to 10.07.2006, (including summer vacation break) followed by regular service w.e.f. 11.07.2006, is being ignored by the respondents; along with certain other prayers.

(2) The facts in brief; as can be delineated from the writ petition; are that the petitioners had applied for the posts of Lecturer in Physics which were advertised on temporary basis as per the advertisement dated 01.06.2001 issued by respondent No.4. The petitioners participated in the process of selection. Both the petitioners were selected through a due process and accordingly they were issued appointment letters on 27.08.2001. They joined their duties pursuant to the appointment letter w.e.f. 27.08.2001 only. The petitioners continued in the same capacity for about six years. Thereafter, the respondent- college issued another advertisement dated 16.05.2006 vide which the posts were advertised on permanent basis. The petitioners again applied for the said post. Having undergone the process of selection, the petitioners were selected for the said posts and the appointment orders were issued to them on 19.09.2006. Since the petitioners were already continuing in their temporary appointments, therefore, pursuant to these appointment letters they entered into their permanent appointment. Since they were already continuing on temporary basis, therefore, after joining in permanent capacity, both the petitioners prayed for continuation of their previous service for the purpose of pay protection and grant of increment. Vide order dated 03.03.2011 (Annexure P-8), that benefit was also granted to the petitioners. Accordingly, the pay of the petitioners was fixed vide order dated 21.11.2012, which has been attached with the petition as Annexure P-9. The regulations issued by the University Grant Commission (UGC) as a scheme of upgradation of pay scales of the teachers; vide notification of the year 1998, are attached with the petition as Annexure P-15. As per this notification the Lecturers are

entitled to Senior Scale on completion of six years of service and are further entitled to Selection Grade on completion of further five years' service in Senior Scale. Since both the petitioners had completed about 14 years of service as lecturer, therefore, they requested the authorities to grant them from due date the Senior Scale, as well as, the Selection Grade; by counting their past service rendered on temporary basis. That request of the petitioners was recommended; by respondent No.4-College to respondents No.2 & 3; to be granted in favour of the petitioners. However, vide order dated 09.11.2015 the said request has been declined by respondents No.2 and 3 on the ground that there was a break in service of the petitioners, immediately before their regular appointments and that their regular appointments were not in continuity with their earlier ad-hoc/contractual service. Hence, they are not covered under the relevant clause of the above said regulations of the UGC.

(3) Arguing the case, the learned counsel for the petitioners has submitted that the service of the petitioners has been continuous since the year 2001. The said service continued till the petitioners joined in their regular capacity. Although the respondent-College used to infuse artificial breaks in the service of the petitioners during summer vacations and before the start of the new sessions, just to save the salary for that period, however, the service of the petitioners were never terminated in terms of their temporary appointments. Therefore, for all legal purposes, the service of the petitioners is continuous throughout. The counsel has further submitted that even if there was some break, as perceived by respondents No.2 & 3, that also stood condoned by the fact that the respondents themselves have counted the previous service of the petitioners for the purpose of pay protection and the grant of the annual increments. The counsel has also submitted that although the respondents are referring to the alleged break in service from 01.04.2006 till 10.07.2006, however, even this break was only an artificial break of summer vacations and before start of the new session. The service of the petitioners was never terminated before the start of their regular service. It was only that the petitioners were not paid salary for this period. Although, the order of regular appointment was issued by the respondent- College w.e.f. 19.09.2006, a date on which the petitioners were actually working on temporary basis in continuation of their earlier service, however, the appointment of the petitioners on regular basis have been shown in record with effect from retrospective date of 11.07.2006. But the fact remains that the petitioners were appointed on permanent basis vide appointment letters

dated 19.09.2006 and the petitioners were working in temporary capacity immediately before that on 18.09.2006. Hence, as a matter of fact, there is no break in service of the petitioners, immediately preceding their appointment on regular basis. Hence, the petitioners are entitled to their temporary service being counted towards grant of the Senior Scale and the Selection Grade. The counsel for the petitioner has relied upon the judgment rendered by this court in the case of ***Rupinder Kaur*** versus ***State of Punjab & others***, passed in CWP No.9922 of 2013 on 21.04.2016, to contend that the artificial breaks in the service cannot be interpreted to the prejudice of an employee.

(4) On the other hand, the counsel for the respondent-College has submitted that although the petitioners worked in temporary capacity from the year 2001 till the year 2006 when they were regularly appointed, however, there have been breaks in their service. Keeping in view the fact that the previous service of the petitioners had been counted towards pay protection and grant of increments, the respondent-College had recommended the case of the petitioners for counting of the previous service for grant of Senior Scale and Selection Grade as well. However, the respondents No.2 & 3 have declined the same. Therefore, the respondent-College cannot grant the said pay scale to the petitioners. The posts, against which the petitioners have been appointed on permanent basis, being the grant in aid posts, the College is bound by the directions issued by respondents No.2 & 3.

(5) There is no representation on behalf of respondents No.2 and 3, therefore, this court does not have the benefit of the assistance from their side. However, the written statement filed by respondents No.2 & 3 is very much there on record. The perusal of written statement, filed by respondents No.2 & 3, shows that they have denied the benefit of counting of previous temporary service of the petitioners; towards grant of Senior Scale and Selection Grade; on the ground that their regular appointment was not in continuity of their previous service. Hence, their case is not covered under the regulations of the UGC.

(6) Since the dispute relates to the provisions of the regulations issued by the UGC, therefore, it would be appropriate to have a reference to the relevant clauses of the said scheme, which are reproduced hereinbelow:

“UGC Notification on revision of Pay Scales, minimum qualifications for appointment of teachers in Universities & Colleges and other measures for the maintenance of

standards, 1998.

xxx.... xxx.... xxx....

7.0.0 CAREER ADVANCEMENT

- 7.1.1 Minimum length of service for eligibility to move into the grade of Lecturer (Senior Scale) would be four years for those with Ph.D., five years for those with M.Phil, and six years for others at the level of Lecturer, and for eligibility to move into the Grade of Lecturer (Selection Grade)/Reader, the minimum length of service as Lecturer (Senior Scale) shall be uniformly five years.
- 7.1.2 For movement into grades of Reader and above, the minimum eligibility criterion would be Ph. D. Those without Ph.D. can go up to the level of Lecturer (Selection Grade).
- 7.1.3 A Reader with a minimum of eight years of service in that grade will be eligible to be considered for appointment as a Professor.
- 7.1.4 The Selection Committees for Career Advancement shall be the same as those for Direct Recruitment for each category.
- 7.1.5 The existing scheme of Career Advancement for non academic staff namely, Assistant Director of Physical Education, Assistant, Registrar, Assistant Librarian would continue.

7.2.0 LECTURER (SENIOR SCALE)

A Lecturer will be eligible for placement in a senior scale through a procedure of selection, if she/he has:

- (i) Completed 6 years of service after regular appointment with relaxation of one year and two years, respectively, for those with M.Phil and Ph.D.
- (ii) Participated in one orientation course and one refresher course of approved duration, or engaged in other appropriate continuing education programmes of comparable quality as may be specified or approved by the University Grants Commission.

(Those with Ph.D. degree would be exempted from one refresher course)

- (iii) Consistently satisfactory performance appraisal reports.

7.3.0 LECTURER (SELECTION GRADE)

Lecturers in the Senior Scale who do not have Ph.D. degree or equivalent published work, and who do not meet the scholarship and research standards, but fulfill the other criteria given above for the post of Reader, and have a good record in teaching and, preferably, have contributed in various ways such as to the corporate life of the institution, examination work, or through extension activities, will be placed in the Selection Grade, subject to the recommendations of the Selection Committee which is the same as for promotion to the post of Reader. They will be designated as Lecturers in the Selection Grade. They could offer themselves for fresh assessment after obtaining Ph.D. and/or fulfilling other requirements for promotion as Reader and, if found suitable, could be given the designation of Reader.

xxx.... xxx.... xxx....

8.0.0 COUNTING OF PAST SERVICE

Previous service, without any break as Lecturer or equivalent, in a university, college, national Laboratory, or other scientific organizations, e.g. CSIR, ICAR, DRDO, UGC, ICSSR, ICHR and as a UGC Research Scientist, should be counted for placement of lecturer in Senior Scale/Selection Grade provided that:

- 8.1.0 The post was in an equivalent grade/scale of pay as the post of Lecturer.
- 8.2.0 The qualifications for the post were not lower than the qualifications prescribed by the UGC for the post of Lecturers;
- 8.3.0 The candidates who apply for direct recruitment should apply through proper channels;
- 8.4.0 The concerned Lecturers possessed the minimum qualifications prescribed by the UGC for

appointment as Lecturers,

8.5.0 The Post was filed in accordance with the prescribed selection procedure as laid down by the University/State Government /Central Government/Institution's regulations;

8.6.0 The appointment was not ad-hoc or in a leave vacancy of less than one year duration. Ad-hoc service of more than one year duration can be counted provided-

- (a) the ad hoc service was of more than one year duration;
- (b) the incumbent was appointed on the recommendation of duly constituted Selection Committee; and
- (c) the incumbent was selected to the permanent post in continuation to the ad hoc service, without any break.

xxx.... xxx.... xxx....”

(7) Having heard counsel for the parties and having gone through the record, this court finds substance in the argument of the counsel for the petitioners. It is not even in dispute by either of the parties that petitioners were appointed on temporary basis in the first instance; after the posts having been advertised and after having been selected in a competition through a duly constituted Selection Committee. A perusal of the appointment orders dated 27.08.2001, issued to the petitioners in their temporary appointment, show that for termination of their services at least one month's notice was required to be given. Moreover, the perusal of the appointment letters also shows that it was not on ad-hoc or leave vacancy. The clause 2 of the appointment letters show that the appointment was on temporary basis. Hence, it is clear that the temporary appointment of the petitioners could not have been terminated except by giving a one month notice as stipulated in their terms of appointment. However, this is not even the case of any one of the respondents that at the time of infusing of the breaks during the summer vacations, any notice was ever given to either of the petitioners. In that situation, the break infused by the respondent- College is nothing but an attempt to save the salary for the period for which the petitioners were not actually taking the classes, although they might be performing some other works in the college. Such an attempt at economy by the College, cannot be interpreted to the prejudice of the petitioners, whose temporary appointment has

never been formally terminated. Hence, there is nothing on record to support the contention of the respondents that there was actually a break in service of the petitioners. It deserves to be emphasized that mere denial of salary of a period cannot be taken as break in service; as such.

(8) Moreover, if at all, the said duration is to be taken as break, of any kind and colour, the said break also stood condoned by none other than the respondents No.2 & 3 themselves. The previous service of the petitioners was permitted to be counted towards increment and pay protection. The letter granting this benefit, as well as, the actual pay fixation of the petitioners after protecting their previous salary, is duly placed on record. Once the respondents themselves have condoned the break period even for the purpose of protection of pay and grant of increments, then there is no justification left with the respondents not to grant the benefit of the said period of service in temporary appointment for the purpose of grant of Senior Scale and Selection Grade. On this count, as well, the petitioners are entitled to the benefit of counting of their previous service for the purpose of Senior Scale and the Selection Grade.

(9) Still further, a perusal of the UGC scheme and of the records of the petitioners shows that the petitioners fulfill all the conditions as required under Clause 8.0.0 and up to the Clause 8.6.0 (b) even as per the respondents. Respondent No.2 and 3 has tried to take shelter under sub- Clause (c) of Clause 8.6.0 of the aforesaid scheme. However, even this Clause cannot be interpreted as an impediment in the way of the petitioners. The said clause requires that the incumbent should have been selected for the permanent post in continuation of the ad-hoc service. It is not even in dispute that the petitioners were issued the appointment letters on 19.09.2006 for their regular appointments and immediately on the date preceding to this date, the petitioners were actually in employment on temporary basis. Therefore, this condition is otherwise also fulfilled. Although the respondents have shown the regular appointment w.e.f. 11.07.2006 just to take it to the point of artificial break, however, the respondents cannot go behind the reference date of regular selection and appointment; as prescribed in this Clause, to take any break into consideration and just to deny the benefit of the scheme to the petitioners. Even otherwise, as held above, the said break was not a break in service, it was only the break in payment of salary to the petitioners and even that stood condoned by the respondents by granting the benefit of this period for the purpose of

increment and the pay fixation. This court finds the reliance of the petitioners on the judgment in the case of *Rupinder Kaur* (Supra), to be well placed.

(10) In view of the above, the present petition is allowed and the impugned order passed by the respondents is set aside. The respondents are directed to grant benefit of counting of past service of the petitioners rendered in their temporary appointments, towards grant of Senior Scale and the Selection Grade in accordance with the provisions of the Scheme of the UGC, by treating them as eligible for the same in all respects. Let the needful be done within a period of three months from today. The petitioners shall also be entitled to receive all the arrears arising from re-fixation of the pay on account of grant of this benefit.

Payel Mehta