

Shashank Kumar Thakur and Others Vs Union of India (UOI), The Vice Chancellor, Banaras Hindu University and The Registrar, Banaras Hindu University

Court: Allahabad High Court

Date of Decision: Sept. 20, 2007

Citation: (2008) 6 AWC 6094 : (2008) 1 UPLBEC 31

Hon'ble Judges: Vineet Saran, J

Bench: Single Bench

Judgement

Vineet Saran, J.

In June, 2007 an advertisement was issued by the Banaras Hindu University for filling up vacancies on several posts,

including 19 posts of Semi Professional Assistants in Library Sector. It is for the selection and appointment on such posts of Semi Professional

Assistants in Library Sector that the petitioners are aggrieved.

2. I have heard Smt. Manju R. Chauhan, learned Counsel appearing for the petitioners as well as Sri S.F.A. Naqvi, learned Counsel appearing for

the Union of India and Sri K.K. Roy, learned Counsel appearing for the contesting respondent-University and have perused the record. With

consent of the learned Counsel for the parties, this writ petition is being heard and decided at this stage without calling for a counter affidavit.

3. Brief facts of this case are that on 10.1.2003 an advertisement was issued by the Banaras Hindu University for engagement/appointment of Semi

Professional Assistants ""purely on contractual basis initially for a period of six months extendable for further period on satisfactory services, without

any commitment for absorption on regular basis."" The said appointments were to be made on fixed remuneration of Rs. 4,500/- per month. Then

on 7.4.2003 another advertisement was issued for filling up one permanent sanctioned post of Semi Professional Assistants. All the petitioners had

applied in response to the first advertisement dated 10.1.2003 for the contractual posts and some of the petitioners had also applied for

appointment in response to the subsequent advertisement dated 7.4.2003 for the permanent sanctioned post. It has been stated that the selection in

pursuance of both the advertisements was held together. One Alok Kumar Singh was selected and appointed on the permanent post, which was in

response to the advertisement dated 7.4.2003. The petitioners herein were all selected and given appointment on contractual basis on fixed

remuneration, which, was in response to the advertisement dated 10.1.2003, and claim to continue to work since then. Now by means of an

advertisement issued in June, 2007 applications have been invited for filling up 19 permanent posts of Semi Professional Assistants in Library-

Sector.

4. The case of the petitioners is that since they have been working as Semi Professional Assistants on contractual basis for the last 4 years and their

engagement/appointment had been made after following the selection process, they ought to be first absorbed on the vacant posts which have now

been sanctioned. It has further been submitted that in similar situation, the Office Assistants who had been appointed on contractual basis in the

year 2002, were later confirmed as Office Assistants when the posts were made available to the University in the year 2005. It has thus been

submitted that the petitioners, who "are all similarly placed as the Office Assistants, should also be regularized/absorbed on the post of Semi

Professional Assistants which have now been sanctioned and have been advertised. Smt. Chauhan has further submitted that as per the University

Grants " Commission (UGC) guidelines, 25% posts are to be filled up by absorption from amongst the persons already working and .as such the

petitioners should first be considered for such absorption before advertising the posts for direct recruitment.

5. Sri K.K. Roy, learned Counsel appearing for the respondent-University has, however, submitted that the engagement/appointments on contract

basis were made purely on temporary basis with the condition that the candidates would not : have any commitment for absorption on regular

basis, and as such they would have no lien on the posts now sanctioned. Sri Roy has further stated that after the issuance of advertisement, only the

applications have been compiled and no further process with " regard to selection has yet been initiated by the University. It has been stated that

the petitioners had the opportunity to apply in response to the said advertisement. On having received instructions from his clients he has given an

undertaking that those who could not apply because of being overage will be given relaxation of age for the period during which they have worked,

i.e. in case if they have worked on contractual basis for 4 years then the number of years that they have worked .would be deducted from their age

and in case if they are then within the prescribed age, and otherwise eligible, they would also be permitted to apply and compete alongwith other

candidates.

6. It is true that the petitioners have been working as Semi Professional Assistants and have gained experience of 4 years. It is also correct that

their initial engagement on contractual basis was after following the selection process, but what is to be considered by this Court is as to whether a

person, who had been initially engaged/appointed on contractual basis with the condition that he shall not have any right of absorption on regular

basis, can at this stage, when permanent posts have been sanctioned, be permitted to be regularized on such post as of right. It is well settled law

that regularization of a temporary or daily wage employee can be directed only when there is some Rule, Government Order or specific provision

of law with regard to the same. The guidelines of the U.G.C. are not directory in nature. They cannot be considered as a provision of law to be

implemented by the authorities for regularizing a person in service, specially when the initial engagement was made with the specific condition that

there shall be no commitment for absorption on regular basis.

7. In response to the earlier advertisement of 10.1.2003 (whereby applications were invited to work on purely contractual basis) there could be a

large number of competent and better qualified persons who may not have applied because of the terms of appointment (which provided for fixed

remuneration of Rs. 4,500/- per month), and they may have otherwise applied if the posts were permanent and on regular pay scale. Such persons

would be deprived of an opportunity of employment. Further there may be a situation when in the year 2003, some persons may not have been

eligible/qualified to apply and now when the posts have been sanctioned and advertised in 2007, they have become eligible; and such persons may

be better qualified and more meritorious than the petitioners; and in case if the prayer of the petitioners to allow their absorption on such posts is

granted, such persons who have now become eligible, would be deprived of their right to employment.

8. This Court has thus to balance the equities between two sets of persons, one who have approached this Court; and the other who have applied

in response to the advertisement (and who have not been impleaded as party in this case) but would be adversely affected and would be losing

their chance to get employment, even though they may be better suited for the post.

9. The endeavour of the every institution giving appointment would always be to engage the best hands available. For this purpose a fair

competition amongst the eligible candidates is the only option. Sri Roy has very fairly stated that the University is prepared to relax the age upto the

number of years that the petitioners have worked (which in this case would be four years) so that they may also become eligible for applying and

competing alongwith other candidates.

10. In view of the aforesaid discussion, in my opinion, the prayer for absorbing the petitioners on the posts of Semi Professional Assistants in

Library Sector which have now been advertised, does not deserve to be granted, but this Court would also be of the view that the petitioners

should get a fair chance to apply for appointment on such posts and compete alongwith other candidates.

11. Accordingly, this writ petition is disposed of with the direction that in case if in response to the advertisement of June, 2007 (filed as Annexure-

30 to this writ petition) the petitioners, who have been working as Semi Professional Assistants in Library Sector since 2003, apply for

appointment on such posts within three weeks from today, their applications shall be entertained, in accordance with law, and they shall be given

relaxation of 4 years of age and if they are otherwise found eligible, their applications shall be considered for selection and appointment on the post

of Semi Professional Assistants alongwith other candidates who have already applied.

12. No costs.