

Right to Employment Protection of the Adjunct and Internal Full Time Contract Faculties in the Tribhuvan University

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Abstract

This study explores at the legal rules for recruitment part-time and full-time contract teachers at Tribhuvan University (T.U.) in Nepal. It focuses on how they are recruitment, selection, and how their rights are protected. The study uses legal documents like the T.U. Act and court cases from other countries to examine these issues. The findings show how T.U. uses part-time teachers, how it hires them, and how decisions made by the administration can affect them. The study also highlights international court cases to see what they say about following proper procedures, meeting contract obligations, and protecting the rights of teachers. Based on this, the study suggests ways to improve the situation, i.e., considering the needs of teachers, following labor laws, and having clear rules about academic freedom and job security. It also suggests making contracts clearer and giving teachers more rights, such as knowing more about their jobs and being able to bargain together as a group.

Keywords: Adjunct, Employment, Right, Tribhuvan, University

Introduction

Adjunct faculties are the faculties who are apart from the University and employed for part time employment or services as per T.U Faculty, Staff Service rule 2050 of sub rule 2(V5) and provision of appointment as per rule 10(1)(1a),(2),(3) and(4) before the additional class management directives-2077 which is effective from 2077 Bhadra 1 . The full time contract faculties are those faculties who are appointed as per the decision of the cabinet and apart from it appointed as per the decision of the T.U. executive council and the term faculty is defined in the T.U Act,2049 chapter 1, clause 2(k). Tribhuvan University and its Constituent Campuses have made use of part-time faculty for decades as per the T.U Faculty Staff service rule 2050 of rule 10 of sub rule 2 and 4 and delegated authority by the central office(The decision made by the executive council, decision no 1810 on the date 2074-12-4 to appoint the part-time faculty by the constituent campuses as per submitted report constituted by the executive

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council and on the date 2075-1-31 and decision no 1886) through which concerned constituent campuses can appoint part time faculty after allocating the classes to the full time faculty on the basis of work load. The concerned campuses used to deploy the faculty by mentioning their name, course subject and the teaching shift in the routine only without providing the appointment letters. Before the above decision of the executive council, the concerned campuses used to deploy the part time faculty without prior approval of the T.U central office (executive council) and without providing the appointment and reappointment letters.

However, both their numbers and the work they do are in process of drastic change. Executive council issued the additional class management directives in 2077 and enforced in all the campuses from 2077, Bhadra 1. As per this directive the all constituent has to appoint the Part time faculty as per the procedure mentioned in the additional class management directive-2077 and has to take the prior approval before deploying them in the class, this process of deploying caused the new opportunities for employment right.

The major reason to appoint the internal full time contract as per above stated directives and decision no 1293 of the executive council is due to their high qualification, best working efficiency, experience and ability to perform duties than the permanent faculties, low overhead cost of employing, teaching the courses at low rate than that of a full time permanent faculty, course fluctuation, increase in enrollment, expand in course offering, less recruitment and selection cost compared to service commission and service commission does not announce the recruitment and selection process for many years, no uniformity in the time schedule or calendar based recruitment and selection of the faculty and the procedure adopted by the service commission is not as per compliance provisioned in the faculty appointment recommendation bylaws-2075 and service commission do not announce the required number of exact vacant position.

As per the employment rights conferred by the constitution of Nepal 2072 of article 33 and 34, civil code, 2074 of clause 20, labor Act 2074, clause 180(3) ([Law Commission, 2017](#)) and the legal doctrine and international principal propounded by the courts, the association of the part time professors, part time faculties of the inside and outside the Kathmandu valley faculties collective bargaining lead towards the agreement with the central office and the committee constituted by Ministry of Education and part time professor representative in order to solve the part time professor problem on the date 2074-06-27 and the decision of the cabinet on 2074-8-8, lead towards the development or way out for the management of employment rights of the part time faculty by the executive council to manage part time faculty in the form of full time contract on the basis of directives and decision made by the executive council on 2077 Magh 2 and on the date 2078-11-20 of the decision no 1293 to recruit and recommend for appointment through bearing from the internal financial source of T.U. constituent campuses, full work load, requirement, reasonableness, seniority, continuity and reasonableness through incorporating the internal recruitment, selection and appointment procedure by the concerned campuses. The internal source of financial payment of 12 month equivalent to the teaching assistant position monthly payment equivalent to Gazetted third class officer of Nepal government decision made by the executive council through making contract as per the

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decision held on Magh 2 and as per the format of agreement based on decision no 1369 along with the directed correspondence to follow the circular from central office.

These contract full time faculties somehow have been primarily concerned with the equal pay for equal value of work or with the pay equity of teaching assistant of university with limited benefits with rigid agreement and working conditions provision made by providing appointment letter, workload of 12 credit hour in a year in two semester in Master's degree and 18 credit hour in Bachelor degree, 12 month payment, 15 days leave including causal and festival leave, winter and summer holiday, 15 days holiday in case of absence of emergency work in a fiscal year and public holiday in the contract agreement. The festival allowance or Dashain allowance equivalent to one month payment has been included in the contract agreement, based on the basis of decentralization rule, 2055 of rule 7, sub rule 6 (t) and rule 43 of the faculty, staff service rule 2050 by the concerned campuses. The stated above legal procedure of employment right has maintained relationship with these faculties with the University for further career development and job security but faculty has to gain the right to unionize for their employment right further. These faculties seems to be treated as potential full time Tribhuvan University contract faculties in near future through bearing the financial source from T.U. central office by the decision of the University executive council or through implementation of the decision of the cabinet made on 2074-08-08 of the number 1420 regular contract and finally converted into the permanent faculty through internal open competition from T.U. service commission.

Statement of the problem

Although adjunct faculties are appointed as per stated rule, directive and circular of the executive council but these faculties has been involved in teaching activities long time for many years employment as a part time due to low overhead cost of employing, teaching the courses at very low rate than that of a full time permanent faculty if the class exceeds after allocating the classes for full time faculties. compared to permanent lecturer faculty, not providing additional benefits and allowances, medical and health insurance, gratuity, service commission does not announce the recruitment and selection process for many years, no uniformity and time schedule or calendar based recruitment and selection and the procedure adopted by the service commission is not as per compliance provisioned in the faculty appointment recommendation bylaws-2075 and service commission does not announce the required number of vacant position as vacant in the university. The T.U executive council has not issued the directives not procedure further regarding the job security of the explicit security of the tenure and faculty welfare programme, additional benefit, allowances, provident fund, medical and health insurance that should be included in terms and conditions clearly, further career development policy based decision for the full time contract faculties, has not been involved or exercised for enactment of rule by executive council for internal open competition for approval from T.U senate by the service commission for full time contract faculties.

- i) What are the existing legal provision of the adjunct faculties and full time contract faculties employment right of the TU?

- ii) What are the recruitment and selection provision of the adjunct and full time contract faculties based on additional class management directives and circular of the TU executive council?
- iii) What are the international cases and doctrine in protecting the employment right of the faculties?

Research Objectives

- i) To access the existing legal provision regarding the employment of the adjunct faculty and full time contract faculties of the T.U.
- ii) To highlight the adjunct faculty and full time contract faculties' recruitment and selection provision based on additional class management directives and circular of the T.U.
- iii) To explore the international cases in protecting the employment right of faculties.

Methodology

This research was based on the doctrinal and Analytical research methods. Under the doctrinal methods data is collected through the primary sources like Tribhuvan University Act, 2049, T.U faculty and personnel service rule 2050, T.U decentralization rule, 2055, T.U Executive Council directives decision no. 1293, additional class management directives-2077, executive council decision no 1293 on the date 2078-10-20 and secondary sources of data shall be collected from the circular, books, articles, law journals, magazine, dissertation so on.

Result and Discussion

Existing legal provision regarding the employment of the adjunct faculty and full time contract faculties of the T.U

Tribhuvan University and its Constituent Campuses have made use of part-time faculty for decades as per the T.U Faculty personnel service rule 2050 of rule 10 of sub rule 2 and 4 and delegated authority by the central office(The decision made by the executive council, decision no 1810 on the date 2074-12-4 to appoint the part-time faculty by the constituent campuses as per submitted report constituted by the executive council and on the date 2075-1-31 and decision no 1886) through which concerned constituent campuses can appoint part time faculty after allocating the classes to the full time faculty on the basis of work load. Although there is also the provision of appointment in the internal contract as per decentralization rule 7 of sub rule 6 of part j and k for the employment right but T.U has not implemented it. As per additional class management directives clause 3(a) minimum specified full work load should be allocated for the full time internal contract faculties and mentioned in the contract agreement also has to manage one additional class and campus has to motivate to involve for the full time contract and permanent faculties for additional class if remains as per clause 6(a). There is provision of the appointment in other nature of contract is provisioned on the T.U faculty, personnel service rule 10(1) and 1(a) and appointment of the visiting faculty on the contract as per service rule 11.

Similarly on the date 2074-08-08 as per the decision of the cabinet, it lead towards the development or way out for the management by appointing the part time faculties by the executive council to manage part time faculty in the form of contract but this decision has not been implemented yet due to budget constraint of the government of Nepal that has been postponed now due to political reason. On the basis of decision made by the executive council of the decision no 1293 of the date 2078-11-20 to recruit and appoint the part time faculties into internal full time contract through bearing from the internal financial source of the campus based on full work load, requirement, reasonableness, seniority, continuity and reasonableness through incorporating the internal recruitment, selection and appointment procedure by the concerned campuses.

As per the decision held on Magh 2 of the executive council and as per the format of agreement based on decision no 1369 along with the directed correspondence to follow the circular of the central office for the recruitment and selection in order to recommend for appointment before T.U executive council.

There is also the legal provision for appointing the existing internal contract faculties based on the decision made by the cabinet on the date 2074-08-08 of the number 1420 regular contract and finally converted into the permanent faculty through internal open competition from T.U. service commission through procedure.

Adjunct faculty and full time contract faculties' recruitment and selection provision

As per the decision no 1293 of clause 2 a,b,c and d, clause 5 there is a provision for recruitment and selection of the internal full time contract for those faculties who possess the specified full work load class .The provision for recruitment and selection for adjunct faculties who does not hold or possess the specified full work load and the campus cannot manage the internal source of funding due to the lack of budget source then the such faculties are managed as per additional class management directives-2077 through making course agreement along with the provision of remuneration is provisioned in the clause 4, in the form of course agreement for those who are allocated the class on the basis of additional class management based on the additional class management directives 2077 of the clause 3(d), by adopting the procedure mentioned in the additional class management directives- 2077 clause 4(a) and qualification based on clause 4(b) and clause 7(a),(b),(c) and(d) in the form of course agreement based on schedule 2 of this directives issued by executive council based on T.U Act,2049 clause 14(i) and(j) and faculties, personnel service rule no 126 and direction issued by the executive council on the date 2078-11-20 to all dean office, campus and department to get approval for the campus regarding the number and subject for the recruitment and selection process and formation of the committee to draft the procedure for recruitment and selection procedure with the terms of service and conditions, qualification and other provision in order to provide the remuneration equivalent to the teaching assistant Gazetted level third class and formation of the selection committee to make recommendation for the appointment before executive council T.U. central office and approval for making the agreement before involved in teaching work through internal competition.

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Cases in protecting the employment right of faculties

In the case of National Collegiate Athlete Ass'n Vs Tarkanian, 488 U.S, 179,191(1988), the court propounded the principle that the due process is the subject of scrutiny based that must be complied when it decides to impose the disciplinary action upon tenured employees or the faculty member of a state university and should not deny from due process or equal protection ([U.S. Supreme Court, 1988](#)).

In the case of Phillips Petroleum Co Vs Shutts, 472 U.S 797, 812(1985), quoting Mullane Vs Central handover Bank & Trust Co 339 U.S. 306,314-15(1950) the decision was that the notice must be the best practicable, reasonably calculated under all circumstances, to appraise interested parties of the pendency of the action and afford them an opportunity to present their objectives ([United States Supreme Court, 1985](#); [U.S. Supreme Court, 1950](#)).

In the case of Lucas vs Chapmam, 430 F.2d 945,947(5th Cir.1970) the court held the decision that A teacher's longtime employment in a continuing relationship through the use of renewals of short-term constructs was sufficient to give him necessary expectancy of reemployment that constituted a protectable interest ([United States Courts of Appeals, 1970](#)).

In the case of Perry Vs Sindermann, 408 U.S 693,599(1972), The court held the decision that the constitution does not require opportunity for a hearing before non-renewal of a non-tenured teacher's contract unless he can show that the decision not to rehire him somehow deprived him of an interest in liberty or that he had property interest in continued employment for long time, despite a lack of tenure or a formal contract. De facto tenure exists due to the method of acquiring such tenure through understanding of the institution rather than formal requirement ([U.S. Supreme Court, 1972](#)).

In the case of Ferguson Vs Thomas, 430 F.2d 852 (5th Cir.1070), holding that the denial of re-employment rights of based on plaintiff's classroom remarks was unconstitutional (United States Courts of Appeals, 1970).

In the case of Greene Vs Howard University,412 F.2d1128(D.C Cir1969) In this case a group of faculty members created several disturbances on the University campus, to prevent further disturbances the university sent a letter to the involved faculty members informing that their appointment would not be renewal then faculty members filed suit alleging breach of contract and seeking renewal because they had not received the requisite notice of renewal and required to provide with opportunity of hearing because nonrenewal had predicted on charges of misconduct. The district court decided that they were not entitled to a renewal as a matter of law and university had legal right to dismiss them. Complete discretion in the matter is vested in the university authorities ([U.S. District Court , 1967](#)).

In reversing the lower court the appeal court decided that the qualification of the university power to terminate arise when notice of non-appointment fails to comply with the previously established guidelines. These qualifications cannot be negated by the university disclaimer that it will not be contractually obliged to adhere to the notice provision based on employment regulation and customs.

In the case of Balen Vs Peralta Junior College District, 523 P 2d 629(cal1974), the California supreme court held Balen was a probationary teacher, he was entitled to predetermination notice and hearing because he was denied such notice and hearing. His continuous service

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afforded him a legitimate expectation of employment so he had a property interest in his part time teaching position ([California Supreme/Appellate Courts, 1974](#)).

In the case of Kansas state Agriculture College Vs Mudge, 21 Kan 169(1878), the court awarded damages to a professor dismissed in violation of his employment contract, despite the existence of a contractual clause permitting the board to remove a professor wherever the interests of the college shall require.

Conclusions

No person shall be deprived of personal liberty regarding freedom to engage in any occupation or be engaged in employment except provided by law as per article 17 part (f) constitution of Nepal, article 33 right to employment based on terms and conditions as determined by federal law, article 34 right to proper work practice and right to proper appropriate remuneration, facilities and contribution based social security and right to form trade union, participate in it and organize collective bargaining. regarding labour clause 10 of part (a) and (b) 180 of sub clause 3 and of labour act, 2074 and clause 3 part (a) and (b) of labour regulation, 2074 and civil rights as per clause 20 of sub clause 2 part (e) and (g) of country civil code, 2074. The university or authorized body should protect against nonrenewal and dismissal without cause. Right to give notice with objective reason along with opportunity to be heard and participate in hearing is the fundamental requisite of procedural due process. Substantive due process should be undertaken to protect the denial of certain fundamental rights that may apply to individual faculties. To have property interest for entitlement of reemployment occurs through the statues, contract of a specified term of employment, tenured or non-tenured employees by statutory definition and general institution understanding and continued employment which leads to the

Defacto tenure exists due to the fact of the case although the method of acquiring such tenure may contradict the formal requirement of the institution. Dejure tenure will arise through the recognized procedure for acquiring tenure.

Recommendations

University should seek to understand the aspirations of adjunct and internal full time contract faculties. Adjunct faculties' appointment and remuneration should be followed as per additional class management directives-2077. University should provide notice of the release and an opportunity for grievances to be heard for adjunct faculties. Internal full time contract faculties should be included in not in campus department but in overall communication and participation and believe as integral members of the University. Should follow strictly the article 17, 33, 34 clause 108 of labour act and clause 20 of country civil code, 2074 and the decision of the executive council T.U, it's policy and directives, T.U faculty and staff rule 2050 for terms and condition, remuneration, facilities and allowances.

Standard principles on academic freedom tenure standard should be introduced for internal contract full time faculties based on security of tenure and career development through right and obligation of both individual faculty and university.

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Notice provision for the nonrenewal of the contract based on substantive and procedural rights with objectivity due process, right to confer the terms and conditions of appointment, right to file grievances or appeal negative decision, to have fair hearing opportunity, right to complete the terms of contract and renewal of the contract and right to have collective bargaining, right to form union and participation and right to have appropriate remuneration and facilities a should be defined clearly in the contract or by making directives or introducing policy for internal full time contract.

The customary and academic employment contract would be improved substantially through more comprehensive drafting. Concerned campus executive committee has to send demanding for the prior approval for the extension of renewal of employment of the internal contract on time before the expiry of the tenure granted by the T.U executive council of the approved faculties who appointed as per rule or procedure before T.U central office.

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