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IN THE HON'BLE HIGH COURT OF CHHATTISARG, BILASPUR

W.P. NO. 4077 /06

PETITIONER

: Kamlesh Kumar Netam aged 25 years
S/o Shri Prabhuram Netam
Jan Bhagidari Shikchhak Amlidih
Govt. Middle School Amlidih,
R/o At. and Post-Taraud Tah. Balod
District- Durg (C.G.)

P.R. No. 4446/06
Presented by Shri. S.K. Verma
dated 1/2/06

VERSUS

RESPONDENT

- : 1- The State Govt. of Chhattisgarh,
Through- The Secretary,
School Education Department,
D.K.S. Bhavan, Raipur (C.G.)
- 2- The Block Education Officer,
Durg (C.G.)
- 3- President,
Janghagidari Shikash Samiti
Middle School, Kherthadih,
Tehsil - Balod, District - Durg (C.G.)
- 4- Janpad Panchayat,
Through - Cheif Executive Officer
Tehsil - Balod, District - Durg (C.G.)

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**WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF
INDIA FOR THE ISSUANCE OF WRIT IN THE NATURE OF MANDAMUS
CERTIORARI PROHIBITION AND FOR OTHER SUITABLE WRIT OR
WRITS, ORDER OR ORDERS, DIRECTION OR DIRECTIONS.**



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HIGH COURT OF CHHATTISGARH : BILASPUR

W.P. (S) No.4077 of 2006

PETITIONER

Kamlesh Kumar Netam
Versus

RESPONDENTS

The State of Chhattisgarh & others

Single Bench : Hon'ble Shri Justice Prashant Kumar Mishra

Present :- Shri Barun Chakrabartey, counsel for the petitioner.
Shri P.K. Bhaduri, Panel Lawyer for the State.

ORAL ORDER

(Passed on this 1st day of January, 2014)

Heard learned counsel for the parties.

1. The petitioner has preferred this writ petition seeking regularization on the post of Assistant Teacher in Janbhagidari School from the date of appointment and further to prohibit the respondent from terminating his services and making fresh appointment of teachers in the School where the petitioner was working as Assistant Teacher.
2. Indisputably, similar writ petitions bearing W.P. No.2841/2006 (*Shaskiya Unnayan Shala Shikshak Sang, Chhattisgarh & another v. The State of Chhattisgarh and another*) and other connected matters have been dismissed by this Court on 05.12.2013. Since the present writ petition has raised similar issues, it is also dismissed in the same terms. A copy of the order passed in W.P. No.2841/2006 & other connected matters be placed on the record of this writ petition.

Sd/-
Prashant Kumar Mishra
Judge

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HIGH COURT OF CHHATTISGARH, BILASPUR

W.P. No. 5092 of 2006

PETITIONERS

Gurucharan Sahu and another.

Versus

RESPONDENTS

State of Chhattisgarh and others.

W.P. No.2397 of 2006

PETITIONERS

Jan-Bhagidari Shikshak Sangh Dhamtari

Unit and others

Versus

RESPONDENTS

State of Chhattisgarh and others.

W.P. No. 2818 of 2006

PETITIONER

Ankur Ram Baghel.

Versus

RESPONDENTS

State of Chhattisgarh and others.

W.P. No.2841 of 2006

PETITIONERS

Shashkiya Unnayan Shala Shikshak

Sangh, Chhattisgarh and another.

Versus

RESPONDENTS

The State of Chhattisgarh and another.

W.P. No. 3675 of 2006

PETITIONERS

S.R. Sahu and others.

Versus

RESPONDENTS

State of Chhattisgarh and others.

W.P. No. 5720 of 2006

PETITIONERS

Budheshwar Lal Dewangan and others.

Versus

RESPONDENTS

The State of Chhattisgarh and others.

AND

W.P. No. 5748 of 2006

PETITIONERS

Santosh Kumar Bairagi and others.

Versus

RESPONDENTS

The State of Chhattisgarh and others.

Shri Awadh Tripathi, Shri D.N. Prajapati, counsel for the respective petitioners.
Shri Y.S. Thakur, Dy. Advocate General with Shri Rakesh Jha, Govt. Advocate for the State.

SINGLE BENCH : HON'BLE SHRI PRASHANT KUMAR MISHRA, J.

ORAL ORDER
(05/12/2013)

Petitioners have preferred these writ petitions for direction to the respondents to appoint them or the members of the petitioner-Association who are working as Jan Bhagidari Shikshak as Shiksha Karmi of different grades as per their qualification. They have also prayed for issuance of direction to the State Government not to upgrade/promote the Primary, Middle and High Schools as the Govt. Middle, High and Higher Secondary Schools with further prayer to not to discontinue the services of the Jan Bhagidari Teachers in the garb of re-upgradation of the schools.

2. Learned counsel for the petitioners would submit that the petitioners were appointed as Jan Bhagidari Teachers by the respective school where they worked for a substantial length of time and in due course some of the Jan Bhagidari Schools were also upgraded, however, after a policy decision taken by the State Govt., the Jan Bhagidari Schools were again sought to be upgraded as Govt. Middle, High and Higher Secondary School, the State Govt. or the respective Panchayats are making fresh appointments of Shiksha Karmis ignoring the just and lawful claim of the petitioners. According to learned counsel for the petitioners, since they

continued as Jan Bhagidari Teachers and later on the Schools have been re-upgraded by the State Govt. they have legitimate expectation of continuation of service and their discontinuance or non-consideration for absorption as Shiksha Karmi amounts to violation of principles enshrined in Article 14 and 16 of the Constitution of India. According to them the petitioners were selected by the concerned Jan Bhagidari Samiti pursuant to a selection process, therefore, they cannot be treated as backdoor entrant, therefore, when the Schools were upgraded and taken over by the Govt. the respondents should have taken over/absorbed the services of the petitioners.

3. Per contra, learned Deputy Advocate General would submit that the State Govt. has not framed any Rules under Article 309 of Constitution of India nor any administrative instructions or guidelines having the force of law has been issued for appointment of the Jan Bhagidari Teachers. He would submit that each of the Jan Bhagidari Teacher was appointed at local level by the Jan Bhagidari Samiti which is not a legal entity, therefore petitioners have no right of continuance on the post.

4. On perusal of the papers annexed with the writ petitions, it would appear that Jan Bhagidari Teachers have been appointed at the Panchayat Level Jan Bhagidari Shiksha Samiti and for making such appointment State Govt. has neither enacted any Rules under Article 309 of the Constitution nor any executive instruction has been issued. It appears in the year 2002-03 the State Govt. permitted arrangement of Teachers at the local level by the Jan Bhagidari Samiti, however, no further instruction was issued as to the manner of appointment or the procedure to be followed for making the arrangement. The Teachers so appointed were paid honorarium and their appointment was for a particular Academic Session

which was extended for further Academic Session in some cases. When the State Govt. decided to upgrade the Schools regular Teachers were appointed and the services of the petitioners were automatically discontinued.

5. Indisputably, petitioners have not been appointed by the State Govt. or any Panchayat. Their appointments have been made by the Jan Bhagidari Samiti at the local level. Some of the appointment orders annexed with the writ petitions would reveal that the appointment is not made under any Rules framed under Article 309 of the Constitution of India or any other statutory scheme. The argument that the petitioners have legitimate expectation of their continuance in the service is without any substance because there was no promise by the State Govt. or any instrumentalities of the State at any point of time regarding their continuance or absorption as Teachers. Moreover, their initial appointment was not made under any constitutional scheme.

6. In the matter of **Secretary, State of Karnataka and others Vs. Umadevi (3) & others {(2006) 4 SCC 1}**, the Hon'ble Supreme Court held that writ Court cannot direct regularization or absorption of any daily wage or adhoc or temporary employee.

7. Petitioners have failed to demonstrate violation of any constitutional or statutory right.

8. Thus, the writ petitions being bereft of any substance it deserves to be and are hereby dismissed, however, the dismissal of the writ petition would not come in the way of the respondents, if they desire to take up the representation filed by the petitioners.

Sd/-
Prashant Kumar Mishra
Judge