

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (S) NO. 4406 OF 2016

1. Manju Gupta D/o. Kanhai Prasad Gupta, Aged About 29 Years R/o. Village And Post Kakna, Police Station Bario, Tahsil Rajpur, District Balrampur Ramanujganj (Chhattisgarh)
2. Dipeshwar Tiwari S/o. Krishna Prasad Tiwari, Aged About 28 Years R/o. Village Bagda, Post Koteya, Tahsil Pratappur, Civil And Revenue District Surajpur (Chhattisgarh)
3. Bhangwan Singh Sidar, S/o. Narayan Singh, Aged About 32 Years R/o. I. T. I. Colony, Namnakala, Ambikapur, Civil And Revenue District Surguja (Chhattisgarh)
4. Amar Kumar Gupta S/o. Mahendra Prasad Gupta, Aged About 25 Years R/o. Village And Post Ramanujganj, Civil And Revenue District Balrampur Ramanujganj (Chhattisgarh)
5. Khemraj Paikra, S/o. Jamuna Singh Paikra, Aged About 24 Years R/o. Village And Post Poksari, Police Station Batauli, Civil And Revenue District Surguja (Chhattisgarh)
6. Ajay Kumar Gupta, S/o. Omprakash Gupta, Aged About 23 Years R/o. Village Khadadorna, Tahsil Sitapur, Civil And Revenue District Surguja (Chhattisgarh)
7. Qamar Ahmed, S/o. Kalimuddin, Aged About 23 Years R/o. Village And Post Jainagar, Tahsil Surajpur, Civil And Revenue District Surajpur (Chhattisgarh)

... Petitioners

Versus

1. State of Chhattisgarh Through: Secretary, Employment And Training, Mahanadi Bhawan, Mantralaya, Capital Complex, Naya Raipur, District Raipur, (Chhattisgarh)
2. Director, Employment And Training, Directorate, Mahanadi Bhawan, New Raipur, District Raipur, (Chhattisgarh)
3. Joint Director, Training, Industrial Training Centre, Regional Office, Ambikapur, District Surguja, (Chhattisgarh)

... Respondents

For Petitioners	:	Mr. Manoj Paranjpe, Advocate.
For Respondent-State	:	Mr. Gary Mukhopadhyay, Deputy Government Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

27/02/2017

1. Prayer in the present writ petition is for quashment of the advertisement dated 27.7.2016 (Annexure P-1).
2. The said advertisement has been issued by the office of the Joint Director (Training), Industrial Training Institutes, Regional Office, Ambikapur,

calling in for candidates intending to fill up the posts of Guest Lecturer/Guest Teacher in different fields at Industrial Training Institute, Ambikapur.

3. Contention of the Counsel for the Petitioners is that the Petitioners before this Court had also participated in the similar recruitment process in the year 2014 to 2016 and have been appointed; majority of them in the year 2014, a few of them in the year 2015, and again a few of them in the year 2016. That the services of the Petitioners are satisfactory as on date. No adverse communication has been made against any of the Petitioners till date. The Petitioners are continuously working with the Respondents also is not in dispute.

4. Counsel for the Petitioners further submits that admittedly the status of the Petitioners is also of Guest Lecturer. When the order of appointment was passed, it was specifically mentioned that the recruitment of the Petitioners was for one academic session or till the posts are filled up by way of regular or contractual appointments under the rules of the State Government. In this respect all the Petitioners were also made to swear an undertaking that they shall not make any claim and they shall not be permitted to raise any claim for the said posts subsequently. Further, that they are willing to serve the establishment as long as the sanctioned vacant posts are not filled up either by regular or contractual appointment. Such undertaking has been given by all the Petitioners.

5. Counsel for the Petitioners also submits that contrary to the aforesaid undertaking and the assurance given, the Respondents have now issued the impugned advertisement, Annexure P-1, for replacing the Petitioners with another set of Guest Lecturers for no rhyme or reason whatsoever spelt out either in the reply or in the advertisement. He next submits that the Petitioners have been discharging their duties without any complaint whatsoever and that the Respondents could not have issued a fresh advertisement calling in for

fresh candidature of persons for filling up of the posts by way of Guest Lecturers which is being performed by the Petitioners when the appointment itself was made for a fixed tenure and also till the appointments are made by way of regular or contractual appointment.

6. Counsel for the Petitioners relies upon the decision of the Supreme Court rendered in the case of *State of Haryana & Others v. Piara Singh & Others* [1992 (4) SCC 118], wherein the Supreme Court for the first time had enunciated the principle that ad-hoc and temporary employees should not be replaced by another set of ad-hoc and temporary employees but should be replaced only by way of regular recruitment/appointment. The same principle has been further reiterated by the Supreme Court in the case of *Dr. Chanchal Goyal (Mrs.) v. State of Rajasthan* [2003 (3) SCC 485], wherein in paragraph 8 again the Supreme Court held that ad-hoc and temporary employees should not be replaced by another set of ad-hoc and temporary employees. With the aforesaid analogy laid down by the Supreme Court, the Petitioners have sought for the quashment of the advertisement, Annexure P-1.

7. Counsel for the State however opposing the petition submits that the Petitioners in the instant case are admittedly Guest Lecturers and that no substantive right has been created in their favour, seeking for continuation of their employment beyond an academic session. According to the Counsel for the State, once when the academic session is over, they have now thought of filling up of the posts by fresh advertisement with an intention that they may this year get better candidates for the said posts as Guest Lecturers for the coming session and therefore the State has issued the said advertisement and it cannot be said to be bad in law or illegal in any manner.

8. True it is, that the Petitioners' status is that of a Guest Lecturer but that does not mean that they do not have any right. There is always a legitimate expectation of the Petitioners that since the filling up of the posts has not been

initiated by way of a regular appointment or by contractual appointments, the Petitioners would be permitted to continue.

9. The undisputed fact is that the Petitioners were given appointment only on undertaking given by them pursuant to an advertisement by the Respondents. In the undertaking which was made to be furnished by the Petitioners, they were made to undertake that their appointment would be till the posts are filled up by regular/contractual appointment. This by itself clearly gives an indication that unless the Respondents fill up the sanctioned vacant posts by either regular recruitment or by way of contractual appointment, the Petitioners would continue as Guest Lecturers. On the practical aspect also the fact that the Petitioners are discharging the duties of Guest Lecturers for last more than 1-2 years, itself is a good ground for permitting the Petitioners to continue on the said posts as Guest Lecturers, simply for the reason of their experience on the said post, as fresh recruitment would mean that persons with no or less experience would be participating in the recruitment process, which also would not be in the interest of the students who are undertaking training in the respective institutions.

10. Taking into consideration the decision of the Supreme Court in the case of Piara Singh (supra) and which has been further reiterated in the case of Dr. Chanchal Goyal (supra), this Court has no hesitation in reaching to the conclusion that the advertisement (Annexure P-1) so issued by the Respondents is definitely not in the interest of the students undertaking training at Industrial Training Institute, Ambikapur, and the same would amount to violation of Article 21 of the Constitution of India and the same therefore deserves to be and is accordingly quashed. The advertisement would be deemed to be quashed only to the extent of the recruitment against the posts at which the Petitioners are discharging. That is to say, the

Respondents would be entitled to fill up the posts which are lying vacant by way of Guest Lecturers where there are no Guest Lecturers available.

11. It is directed that the Respondents would not be entitled for filling up the posts of Guest Lecturer by replacing the Petitioners unless the Respondents come up with a stand that the services of the Petitioners were dissatisfactory. The quashment of the advertisement issued by the Respondents would also not come in the way of the Respondents for filling up of the sanctioned vacant posts by regular recruitment or by way of contractual appointment for which the Respondents shall be free.

12. The writ petition accordingly stands finally disposed of.

Sd/-
(P. Sam Koshy)
Judge