

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 7077 of 2016**

1. Ramesh Kumar Ogar S/o Late Prabhudin Ogar Aged About 42 Years District Programme Coordinator, District Public Education Society Office Of District Education Officer, Compound Jagdalpur, District Bastar, R/o Danteshwari Ward, Baila Bazarpara, Jagdalpur, District Bastar, Chhattisgarh
2. Bighneshwar Rana S/o Jagdish Ram Rana Aged About 26 Years District Programme Coordinator, District Public Education Officer, Compound Jagdalpur, District Bastar, R/o Dharampura No. 1, Near Navodaya School, Jagdalpur, Chhattisgarh
3. Temant Pandey S/o Shri M.P. Pandey Aged About 32 Years District Programme Coordinator, District Public Education Officer, Compound Jagdalpur, District Bastar, R/o Residential Plot Karkapal, Jagdalpur, District Bastar, Chhattisgarh
4. Nitesh Panth S/o Late Padum Das Panth Aged About 29 Years Block Programme Coordinator Development Block Bakawand, District Bastar, R/o Village Panchayat Borpadar, Development Block, Bakawand, Jagdalpur, District Bastar, Chhattisgarh
5. Sampat Yadav S/o Late Lakhu Ram Yadava Aged About 31 Years Block Programme Coordinator, Public Education Society Development Block Bastar, Office Of Janpad Panchayat Compound, Bastar, R/o Village Banker, Post Bhanpuri, District Bastar, Chhattisgarh

---- Petitioners**Versus**

1. State Of Chhattisgarh Through The Secretary, School Education Department, Mantralaya, Mahanadi Bhawan, New Raipur, District- Raipur, Chhattisgarh
2. Director, Secretariat, State Literacy Mission Authorization (Smla), School Education Department, State Of Chhattisgarh, First Floor, Integrated School Building Pension Bada Raipur, Chhattisgarh
3. Collector/ President, District Public Education Society, District Bastar, Chhattisgarh
4. District Project Officer, Office Of District Public Education Society, District Education Officer Compound, Jagdalpur, District Bastar, Chhattisgarh
5. Chief Executive Officer, District Panchayat And Officiate Secretary, District Public Education Society, District Bastar, Jagdalpur, Chhattisgarh
6. Collector/president, District Public Education Socieity, District Sukma, Chhattisgarh

----Respondents

For Petitioners:
For State :

Mr. Uttam Pandey, Advocate
Mr. Bhaskar Pyasi, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy

Order on Board

10.03.2017

1. The present Writ Petition has been filed seeking for quashment of the impugned advertisement dated 15.07.2016 published by the Respondents. In addition, a direction is also sought to the Respondents for considering the absorption of the Petitioners to the post against which they are working.
2. The relevant facts necessary for adjudication of the present Writ Petition is that the Petitioners are working as programme Coordinator in literacy mission of India and have been posted under Respondent No.3 & 4. The Petitioners have been appointed, some of them in year 2011 and some in year 2013. The Petitioners are since then rendering their services to the utmost satisfaction of the officers of the department and that there has been no complaint or any allegation against any of the Petitioners. The contract period have been periodically extended and as a result the Petitioners are still discharging their duties as contractual employees. Meanwhile impugned advertisement has been published with an intention of again filling up of the post on which the Petitioner are discharging and this time the advertisement has been issued for filling up all the posts district wise whereas similarly situated district has published block wise. The main grievance is this advertisement which if acted upon there is likelihood of Petitioners being replaced by another set of

contractual employees. He further submits that since the advertisement has been issued for filling up the posts district wise there is also a chance of the Petitioners not being selected in the event if they apply afresh. He submits that the Petitioners have been discharging their duties satisfactorily as contractual employees and the said work is now being handed over to different set of contractual employees. The Petitioners pray that the Respondents may be directed to continue to take work from the present Petitioners considering them as contractual employee till the post are filled up by way of regular recruitments.

3. He relied upon the decision of the Supreme Court in 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.
4. 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.
5. Thus prayed for quashment of the advertisement to the extent of filling up those posts against which the petitioners are discharging duties.
6. Learned State Counsel however opposes the Petition on the

ground that the Petitioners do not have substantive or indefeasible right in their favour. According to the State Counsel the substantive employment of the Petitioner is that of a contractual employee and that the contractual employment would continue as long as contract survives. After the expiry of the period of contract, the employment would stand automatically discontinued. As such the Petitioners cannot claim for continuation of employment against contractual appointment which has been given to them. He further submits that the Petitioners are not precluded from participating for the post which has been published through the advertisement. Therefore since no prejudice have been caused, the petition being devoid of merits deserves to be rejected.

7. Having heard contentions put forth on either side and on perusal of record taking into consideration the view of the Supreme Court in the case of **Haryana & Others v. Piara Singh & Others** as also in the case of **Dr. Chanchal Goyal (Mrs.) v. State of Rajasthan** if we look into the facts of the case it would clearly reflect that the Petitioners undoubtedly are working since 2011/2013 as contractual employees. There is no allegation of any unsatisfactory working or any adverse report against any of the Petitioners. The work is still available in the office of the Respondents as is evident from the impugned advertisement which has been published. Once when the Petitioners are discharging their duties as contractual employees and there is no report or allegation of unsatisfactory working against the Petitioners, this Court does not find any good ground for issuing

fresh advertisement by the Respondents for filling up of post by way of fresh set contractual employees replacing the petitioners.

8. Applying the principle and law laid down in the aforesaid decisions of the Supreme Court, this Court also in the case of **Ganpat Singh Thakur & Others v. State of Chhattisgarh & Others** decided on 18.11.2016 while deciding the Writ Petition held that the advertisement issued was bad to the extent of replacing the persons who were already discharging their duties as contractual employees. This Court is again inclined to take the same view.
9. The impugned advertisement is thus quashed to the extent of the filling up of the post by way of separate contractual set of employees against which the Petitioners are discharging their duties as contractual employees.
10. Needless to mention that this would not come in the way of Respondents filling up of the post which are lying vacant in the department.
11. Accordingly, the Writ Petition stands allowed to the extent that the impugned advertisement is bad in law to the extent of filling up of the post which as on date is being discharged by the Petitioners.
12. The Writ Petition is allowed and disposed off.

Sd/-

(P. Sam Koshy)
JUDGE