

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 4117 of 2016

Deepak Kumar Gautam S/o Late Shri Shiv Narayan Gautam, Aged About 29 Years Occupation Service Lecturer Branch Mechanical Engineering, Government Engineering College, Jagdalpur, District Bastar Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary Department Of Technical Education, Man Power And Planning Department, Mahanadi Bhawan, Mantralaya, New Raipur, P. S. Rakhi, District Raipur Chhattisgarh.
2. The Director, Directorate Of Technical Education, Raipur Chhattisgarh.
3. The Public Service Commission, Through The Secretary, P. S. C. Raipur Chhattisgarh.

---Respondents

For Petitioner	:	Mr. Ishan Verma, Advocate
For State	:	Mr. Arvind Dubey, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy

Order on Board

19/07/2019

1. The primary relief sought for by the petitioner in the present writ petition is for an appropriate direction to the respondents to regularize the services of the petitioner on the post of Lecturer (Mechanical branch).
2. The counsel appearing for the parties submit that the issue involved in the present writ petition has already been dealt with by the Division Bench of this High Court in Writ Appeal No. 14/2017 and other analogous writ appeals decided on 07.12.2018. For ready reference the operative part of the order of the Division Bench dated 07.12.2018 is reproduced herein under:-

“21. Keeping in mind that on a similar and identical matter, the decision rendered by the Division Bench of Bombay High Court in Sachin Ambadas Dawale (supra), had been upheld by the Hon'ble Supreme Court and the subsequent enunciation and explanation which had been given by the Hon'ble Supreme Court as to what Uma Devi case (supra)

really meant as well as the view which the Hon'ble Supreme Court has given in the cases of contractual appointees which are the cases of Sheo Narain Nagar (supra) and Harjinder Singh (supra), it is too late in the day for the Courts to allow the State Government to forsake the Appellants on the specious plea that they were contractual employees and therefore, they have no legal protection available to them.

22. The Court, in the given facts and circumstances will have to stand by the citizens whose right to life and livelihood is at peril and we will be failing in our duty if we do not stand by them especially when their appointments have been made by due process of law against vacant sanctioned posts after advertisement and a regular selection process laid down in the Rules. It is not the case of the State that there is any element of illegality in the manner the Appellants had been hired or engaged.

23. We notice from the reading of the Rules that such selection and appointment has all the attributes of a permanent and valid appointment except for the fact that a label of contractual engagement was initially given which was never adhered to by the State. One of the reasons which is obvious is that they needed these hands. They had no option but to continue with their services and that somewhere at the back of their mind they did not want to take the burden of financial kind by conferring status of permanency, which by itself smacks of unfairness. Resorting to 'hire and fire' has been deprecated by the Courts time and again, especially when the employer is a State. Such action cannot be given judicial approval.

24. Except for those whose services stand dispensed with after the initial hiring for reasons otherwise and those who were hired on part-time basis as well as those who have been appointed after 2012 Rules, all other appointees who have been engaged against vacant sanctioned posts under the 2002 and 2004 Rules and have continued even after coming of 2012 Rules, the basic ethos and essence of such hiring cannot be allowed to be sacrificed on the altar of so-called contractual engagement. The Respondents are directed to regularise their services on the posts being held by them. Their services cannot be dispensed with by the State at this belated hour. Steps for their regularisation must be initiated and completed within three months from the date of the production of a copy of this order."

3. Subsequently, the said judgment of the Division Bench has also travelled to the Hon'ble Supreme Court where though the SLP has been entertained, but no interim protection has been granted. Meanwhile, the Hon'ble Supreme Court has made an observation that pending the SLP before the Hon'ble Supreme Court no contempt proceedings as such should be initiated against the officers of the State Government arising out of the said judgment.

4. It has also been brought to the notice that the Division Bench of this Court in another writ appeal i.e. WA No. 289/2017 again disposed of an identical matter on 21.06.2019 making the following observations:

“6. In the above circumstances, we are of the view that this matter need not be kept pending before this Court. It is disposed off accordingly in the terms of the common judgment dated 07.12.2018 passed by this Court in Writ Appeal No. 14 of 2017 and connected cases. However, it is made clear that fate of the appellant shall depend upon the final verdict to be passed by the Apex Court and further steps could be pursued by the State based on the outcome of the proceedings which are now pending before the Apex Court. In other words, no separate proceedings do require to be filed by the State with regard to the cause of action projected by the Appellant herein, in relation to the verdict under challenge.”

5. Given the aforesaid two orders passed by the Division Bench of this High Court and findings that dispute raised by the petitioner or the relief sought for by the petitioner in the present writ petition being identical and arising out of the same recruitment process, the present writ petition also deserves to be and is accordingly allowed and disposed of in terms of the judgment dated 07.12.2018, passed in WA No. 14/2017 and other analogous writ appeals. As has been already held by the Division Bench in its earlier order dated 21.06.2019, the fate of the present petitioner also shall be dependent on the final verdict passed by the Hon'ble Supreme Court and necessary further steps could be pursued by the State Government based on the judgment of the Hon'ble Supreme Court.
6. With the aforesaid observations, the present writ petition stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge