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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (S) No. 5753 of 2018

1. Babita Pradhan D/o Shri Sewak Pradhan, Aged About 27 Years Occupation - Guest Faculty (Maths Subject) Government Mahaprabhu Vallabhacharya Graduate College Mahasamund District Mahasamund Chhattisgarh.
2. Nirmala Nayak, D/o Shri Tanakdhar Nayak, Aged About 26 Years Occupation - Guest Faculty (Botany Subject) Late Shri Jaydeo Satpathi Government College Basna District Mahasamund Chhattisgarh.
3. Sarita Bhagat D/o Shri Sukhnath Bhagat, Aged About 27 Years Occupation Guest Faculty (Hindi Subject) Government Khemraj Laxmichand Art, Commerce And Science College Bagbahara District Mahasamund Chhattisgarh.
4. Ankita Sinha D/o Shri Manohar Lal Sinha, Aged About 27 Years Occupation - Guest Faculty (Physics Subject) Government Kachna Ghurva College Chhura District Gariyaband Chhattisgarh.
5. Smt. Payal Sahu W/o Shri Ajay Sahu, Aged About 28 Years Occupation - Guest Facutly (Botany Subject) Government College Chhura District Gariyaband Chhattisgarh.
6. Satpreet Singh S/o Shri Manjeet Singh, Aged About 30 Years S/o Shri Manjeet Singh, Occupation - Guest Faculty (Chemistry Subject) Government College Kachna Ghurva Chhura District Gariyaband Chhattisgarh.
7. Ashok Kumar S/o Sanad Ram Aged About 28 Years Occupation - Guest Faculty (Chemistry Subject) Government Pt. Shyamshanker Mishra College Devbog District Gariyaband Chhattisgarh.
8. Dr. Smt. Jyoti Vaidya, W/o Shri Krishna Aged About 30 Years Occupation - Guest Faculty (Chemistry Subject) Government Shahid Kaushal Yadav College Gunderdehi District Balod Chhattisgarh.

---- Petitioner(s)

versus

1. State Of Chhattisgarh Through Principle Secretary, Department Of Higher Education, Mantralaya Indirawati Bhawan New Raipur Chhattisgarh.
2. The Commissioner, Higher Education Block C - 3, 2nd And 3rd Floor, Indravati Bhawan New Raipur District Raipur Chhattisgarh.
3. Principle, Government Mahaprabhu Vallabhachrya Graduate College Mahasamund District Mahasamund Chhattisgarh.
4. Principle, Late Shri Jaydeo Satpathi Government College Basna District Mahasamund Chhattisgarh.
5. Principle Government Khemraj Laxmichad Art, Commerce And Science College Bagbahara District Mahasamund Chhattisgarh.
6. Principle, Government Kachna Ghurva College Chhura District Gariyaband Chhattisgarh.
7. Principle, Government Pt. Shyamshanker Mishra College Devbhog District Gariyaband Chhattisgarh.

8. Principle, Government Shahid Kaushal Yadav College Gunderdehi District Balod Chhattisgarh.

---Respondents

For Petitioners	:	Shri Aditya Chopra, Advocate.
For State	:	Shri Chandresh Shrivastava, Dy. A.G. with Shri Anshuman Shrivastava, P.L.
For Interveners	:	Mr. Ghanshyam Kashyap and Mr. C.J.K. Rao, Advocates.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

26.07.2019

1. The grievance of the petitioners in the present writ petition is that since the petitioners were working as a Guest Lecturer under the respondent No.3 to 8 colleges for the academic year 2017-18 and their academic session has come to an end, the respondents should not be permitted to replace the petitioners by another set of contractual Guest Lecturers.

2. By virtue of an interim order dated 4.9.2018, the petitioners are still working with the respondents (subject to verification of the fact that the petitioners are still working with the respondents by virtue of the said interim order).

3. The contention of the petitioners is that the petitioners have undergone a due process of selection for being appointed as a Guest Lecturer and that the services of the petitioners also were satisfactory as there is no complain whatsoever so far as the competency of the petitioners is concerned. It is further the contention of the petitioners that now that the academic session is over, the respondents should not be permitted to go in for a fresh recruitment process for filling up of the posts of Guest Lecturers under the respondent No.3 to 8 colleges for the subject in which the petitioners were taking classes.

4. Counsel for the petitioners relies upon the judgment of this Court passed in the case of **“Manju Gupta & others v. State of Chhattisgarh &**

others" WPS No. 4406/2016, decided on 27.02.2017, whereby the similarly placed Guest Lecturers under the Director (Industrial Training Institute) have been granted protection from being replaced by another set of Guest Lecturers.

5. The State counsel opposing the petition submits that it is a case where no cause of action has till date arisen, in as much as the petitioners have filed the writ petition only on apprehension and since there is no cause of action, the matter is premature and deserves to be rejected.

6. Having heard the contentions put forth on either side and on perusal of record, what is admitted is that the petitioners were appointed vide Annexure P/1. The order of appointment specifically had a clause mentioning that the appointment so made are till an alternative arrangement is made by way of regular recruitment/contractual/ transfer.

7. Further from the records, it also does not appear that the performance of the petitioners, at any point of time, was found to be unsatisfactory. In the case of "**Manju Gupta**" (supra), this Court in paragraphs No. 8 to 11 has held as under:-

> "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.
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> 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.
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> 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.
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> 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 dis-satisfactory. The qaushment 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."

8. This Court, under the given circumstances, is inclined to accept the same analogy in the case of the petitioners also and accordingly it is ordered that unless there is any complain received against the performance of the petitioners, the respondents are restrained from going in for any fresh recruitment of a Guest Lecturer for the said subject under the respondent colleges against which the petitioners were engaged.

9. It is however made clear that the protection to the petitioners would be only to the extent of not being replaced by another set of Guest Lecturers. This would not preclude the State Government from going in for filling up of the post by way of a regular appointment or by way of engaging contractual teachers under the rules for contractual employment.

10. So far as the claim of remuneration as per the guidelines of the UGC is concerned, it would be open for the petitioner to make a suitable representation before the respondent No.1 in this regard, who in turn would take a policy decision, so far as the remuneration part payable to the Guest Lecturers, keeping in view of the guidelines, that have been laid down by the UGC.

11. However, during the course of argument, it was revealed that there are three interveners in the present writ petition, namely, Nivedita Sahu, Shakuntala Sahu and Dil Kumar Nishad. Dil Kumar Nishad has questioned the appointment of petitioner no.2 Nirmala Nayak who has been appointed as a Guest Faculty for the Botony subject under respondent no.4 college, by virtue of the interim protection. Likewise, Shakuntala Sahu, the another intervener, has questioned the appointment of petitioner no.5, Smt. Payal Sahu, who has been appointed as Guest Faculty for Botony subject under respondent no.6 college. Similarly, the another intervener, Nivedita Sahu, has questioned the appointment of petitioner no.6 Satpreet Singh who has been appointed as a Guest Faculty for the Chemistry subject under the respondent no.6 college.

12. The main contention of the interveners is that they had been appointed earlier to these three writ petitioners, i.e. Nirmala Nayak, Payal Sahu and Satpreet Singh, and their appointment has not been disclosed by the said petitioners when the writ petition was either filed or when the argument for interim relief was being made. According to the interveners, there is a material suppression of fact in this regard before the Court for the purpose of obtaining interim relief and for this reason, the petitioners Nirmala Nayak, Payal Sahu and Satpreet Singh do not deserve to get any relief.

13. Given the aforesaid facts and circumstances, since there is a lapse on the part of the petitioners, namely, Nirmala Nayak, Payal Sahu and Satpreet

Singh, of not disclosing the correct facts to the Court at the time of obtaining the interim relief and also taking note of the fact that the academic session for which the interveners were appointed also having been completed by now, the only remedy which could be granted by this Court would be that so far as the appointment of Guest Faculty for Botony subject in the respondent no.4 college i.e. Government College, Basna, District Mahasamund and the appointment of Guest Faculty for Botony and Chemistry subjects in the respondent no.6 college i.e. Government Kachna Ghurva College, Chhura, District Gariyaband is concerned, the concerned college authorities would be at liberty to have a fresh recruitment conducted for the post of Guest Faculty for Botony and Chemistry subjects wherein the petitioners Nirmala Nayak, Payal Sahu and Satpreet Singh and the interveners Nivedita Sahu, Shakuntala Sahu and Dil Kumar Nishad all subject to their fulfilling the requisite eligibility criteria would be permitted to participate in the recruitment process for the concerned subjects along with other candidates whoever apply and the most meritorious candidates would be selected in the recruitment process for the next session. The liberty granted to the said respondent colleges is only subject to the requirement of the said post by way of Guest Faculty.

14. With the aforesaid observations, the present writ petition stands disposed off.

Sd/-
(P. Sam Koshy)
Judge

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