

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 5852 of 2018

1. Kumudani Dhritlahre, W/o Shri Amar Singh Dhritlahre, Aged About 30 Years
Occupation Guest Faculty (Hindi Subject) Government Badriprasad Arts,
Commerces And Science Graduate College Aarang, Distt.: Raipur
Chhattisgarh
2. Khemlal Chakradhari, S/o Shri Sadaram Chakradhari, Aged About 27 Years
Occupation Guest Faculty (Maths Subject) Government Badriprasad Arts,
Commerces And Science Graduate College Arang Distt. Raipur
Chhattisgarh
3. Hemsagar Choudhary, S/o Shri Mastram Choudhary, Aged About 27 Years
Occupation Gurest Faculty (Zoology Subject) Government And Science
Graduate College Aarang, Distt. Raipur Chhattisgarh
4. Chameli Dewangan, D/o Shri Mochiram Dewangan, Aged About 27 Years
Occupation Guest Faculty (Maths Subject) Government Badriprasad Arts,
Commerces And Science Graduate College Arang Distt. Raipur
Chhattisgarh
5. Upendra Kumar Sahu S/o Shri Gopinath Sahu, Aged About 28 Years
Occupation Guest Faculty (Economics Subject) Government Badriprasad
Arts, Commerces And Science Graduate College Arang Distt. Raipur
Chhattisgarh
6. Surbhi Gupta, D/o Shri Sudesh Gupta, Aged About 30 Years Occupation
Guest Faculty (Commerce Subject) Government Badriprasad Arts,
Commerces And Science Graduate College Arang Distt. Raipur
Chhattisgarh
7. Harish Kumar Sahu, S/o Shri Rajendra Kumar Sahu, Aged About 28 Years
Occupation Guest Faculty (Political Science Subject) Rajiv Gandhi
Government College Simga Distt. Baloda Bazar Bhatapara Chhattisgarh
8. Hemlata Sahu, D/o Shri Leelaram Sahu, Aged About 28 Years Occupation
Guest Faculty (Commerce Subject) Government Navin College Gurur Distt.
Balod Chhattisgarh

9. Gajendra Kumar, S/o Shri Lekhram Aged About 28 Years Occupation Guest Faculty (History Subject) Government Dr. Babasaheb Bhimrao Ambedkar College Dongargaon Distt. Rajnandgaon Chhattisgarh

---- **Petitioners**

Versus

1. State Of Chhattisgarh Through Principle Secretary, Department Of Higher Education, Mantralaya, Indiravati Bhawan, New Raipur Chhattisgarh
2. The Commissioner, Higher Education, Block C-3, 2nd And 3rd Floor, Indravati Bhawan, New Raipur Distt. Raipur Chhattisgarh
3. Principle, Government Badriprasad Arts, Commerces And Science Graduate College Aarang Distt. Raipur Chhattisgarh
4. Principle, Rajiv Gandhi Government College Simga Distt. Baloda Bazar Bhatapara Chhattisgarh
5. Principle, Government Navin College Gurur, Distt. Balod Chhattisgarh
6. Principle, Government Dr. Babasaheb Bhimrao Ambedkar College Dongargaon Distt. Rajnandgaon Chhattisgarh

--- **Respondents**

WPS No. 59 of 2019

1. Dr. Durga Maheshwari, W/o Shri Sanjay Soni, Aged About 37 Years, R/o MIG - 561, Veer Sawarkar Nagar, Heerapur, Raipur, District Raipur Chhattisgarh

---- **Petitioner**

Versus

1. State Of Chhattisgarh Through Its Secretary Higher Education Department, Mantralaya, Mahanadi, Bhawan, Atal Nagar, Raipur Chhattisgarh
2. Additional Director, Directorate Of Higher Education Department, Atal Nagar, Raipur Chhattisgarh
3. Principal, Government Badri Prasad Arts, Commerce And Science Post Graduate College, Aarang, District Raipur Chhattisgarh
4. Upendra Kumar Sahu, S/o Shri Gopinath Sahu Aged About 28 Years Badri Prasad Arts, Commerce And Science Post Graduate College, Aarang, District Raipur Chhattisgarh

---- **Respondents**

For Petitioners	:	Mr. Aditya Chopra on behalf of Mr. Rahul Mishra, Advocate & Mr. Shantam Awasthy, Advocate
For State	:	Mr. Chandresh Shrivastava, Dy. A.G. Mr. Anshuman Shrivastava, P.L.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

26.07.2019

1. The petitioners in the present Writ Petition granted interim protection vide Order dated 06.09.2018, by which they are continued in service. So far as the Petitioner No. 5, namely Upendra Kumar Sahu is concerned, he is also discharging his duties by virtue of the interim order. That one Dr. Durga Maheshwari has also simultaneously filed another Writ Petition i.e, WPS No. 59 of 2019 challenging her termination of service dated 29.10.2018.
2. The contention of the intervenor, as well as the petitioner in WPS No. 5852 of 2018 and WPS No. 59 of 2019 respectively is that, the Petitioner No. 5 Upendra Kumar Sahu undoubtedly was working as guest faculty for the Academic Session 2017 -18, however, when the subsequent advertisement was published on 03.07.2018, the petitioner voluntarily participated in the fresh recruitment process without any claim being made for continuity in service earlier. That in the said recruitment process, in the merit list, the Petitioner No. 5, Upendra Kumar Sahu stood at Sr. No. 8 in the overall ranking whereas the petitioner in WPS No. 59 of 2019 Dr. Durga Maheshwari stood at Sr. No. 01 in the merit list. By virtue of the merit list, Dr. Durga Maheshwari was granted appointment on 03.08.2018 at the Badri Prasad Arts, Commerce and Science Graduate College, Aarang District: Raipur, (C.G.) Dr. Durga Maheshwari, thereafter continued to work on the said post till 29.10.2018 when her service stood abruptly terminated. The

reason of termination was the interim order passed in favour of Upendra Kumar Sahu Petitioner No. 05 in WPS No. 5852 of 2018 on 06.09.2018.

3. It is pertinent to mention that, the interim relief granted on 06.09.2018, the said petitioner along with Upendra Kumar Sahu did not disclose the fact that he had participated in the said recruitment process and he stood lower in rank in the order of merit and also that Dr. Durga Maheshwari has already been appointed from the subsequent recruitment process. Ignorant of this information, by way of suppression of material fact, the interim order dated 06.09.2018 was passed.
4. Now, pending the Writ Petition before this Court, the academic session for which the recruitment process was undertaken vide advertisement dated 03.07.2018 also stands completed. As such, the petitioner in WPS No. 59 of 2019 ie. Dr. Durga Maheshwari cannot be granted any relief for reinstatement, at this juncture. So far as the appointment of Upendra Kumar Sahu is concerned, that also would be only for the academic session 2018-19 only.
5. Therefore, taking into consideration, the facts narrated above ends of justice would meet, so far as the Petitioner No. 05 ie., Upendra Kumar Sahu in WPS No. 5852 of 2018 and Dr. Durga Maheshwari the petitioner in WPS No. 59 of 2019 is concerned, this Court is of the opinion that since the Academic Session for 2018-2019 has also come to an end, it would be in the interest of justice, if Badriprasad Arts, Commerce and Science Graduate College, Aarang, District: Raipur, (C.G.) is permitted to go in for a fresh recruitment for the post of Guest Faculty for the Academic Session 2019-20 for the subject Economics in which both the persons ie., Upendra Kumar Sahu as well as Dr. Durga Maheshwari subject to their fulfilling eligibility

criteria would be entitled to participate and who ever stands meritorious may be granted employment.

6. So far as the other petitioners are concerned, ie., Petitioner No. 1 to 4 and 6 to 9, 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 complaint whatsoever, so far as the competency of the petitioners are 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 for the subject in which the petitioners were taking classes.
7. 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.
8. The State Counsel opposing the petition submits that, it is a case where no cause of action has till date arisen, inasmuch 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.
9. Having heard the contentions put forth on either side and on perusal of record, what is admitted is that the Petitioners No. 1 to 4 and 6 to 9 were appointed. 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.

10. 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.

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 dis-satisfactory. 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.”

11. This Court, under the given circumstances, is inclined to accept the same analogy in the case of the Petitioners No. 1 to 4 and 6 to 9 and accordingly it is ordered that unless there is any complaint received against the

performance of the Petitioners No. 1 to 4 and 6 to 9, the respondents are restrained from going in for any fresh recruitment of a Guest Lecturer for the said subject under the Respondent No. 3-college against which the petitioners were engaged.

12. It is, however, made clear that the protection to the Petitioners No. 1 to 4 and 6 to 9 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.

13. So far as the claim of remuneration as per the guidelines of the UGC is concerned, it would be open for the petitioners 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.

14. With the aforesaid observations, the present Writ Petition ie., WPS No. 5852 of 2018 and WPS No. 59 of 2019 stands disposed-off.

**Sd/-
(P. Sam Koshy)
Judge**