

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 7198 of 2018

1. Ranu Rathore W/o Shri Hemant Rathore Aged About 34 Years
Occupation- Guest Faculty (Subject Botany) Government College Deepika
District Korba Chhattisgarh., District : Korba, Chhattisgarh
2. Sat Kumar S/o Shri Lakhan Lal Aged About 25 Years Occupation- Guest
Faculty (Subject Maths) Government College Deepika District Korba
Chhattisgarh., District : Korba, Chhattisgarh

---- Petitioners

Versus

1. State Of Chhattisgarh Through Principle Secretary, Department Of Higher
Education, Mantralaya, Indravati Bhawan, New Raipur Chhattisgarh.,
District : Raipur, Chhattisgarh
2. The Commissioner Higher Education, Block C-3, 2nd And 3rd Floor,
Indravati Bhawan, New Raipur District Raipur Chhattisgarh., District :
Raipur, Chhattisgarh
3. Principle Government College Deepika District Korba Chhattisgarh.,
District : Korba, Chhattisgarh

---- Respondents

For Petitioner	:	Shri Aditya Chopda, on behalf of Mr. Rahul Mishra, Advocate.
For State	:	Shri Chandresh Shrivastava, Dy. AG with Mr. Anshuman Shrivastava, Panel Lawyer.
For Intervenor/s	:	Mr. Ghanshyam Kashyap, Advocate

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 for the academic year 2018-19 and academic
sessions has come to an end, hence the respondents should not be

permitted to replace the petitioner by another set of contractual Guest Lecturers. By virtue of interim order granted by this Court, the two petitioners herein are continuing in service.

2. The contention of the petitioner is that the petitioner has undergone a due process of selection for being appointed as a Guest Lecturer and that the services of the petitioner also was satisfactory as there is no complaint whatsoever, so far as the competency of the petitioner is concerned. It is further the contention of the petitioner 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 petitioner was taking classes.
3. Counsel for the petitioner 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.
4. 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 petitioner has filed the writ petition only on apprehension and since there is no cause of action, the matter is premature and deserves to be rejected.
5. Having heard the contentions put forth on either side and on perusal of record, what is admitted is that the petitioner was 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.

6. The intervenor at this juncture opposes the appointment of the petitioner No. 1 alleging that there has been material suppression of facts made by the petitioner No. 1 for the purpose of obtaining interim relief. According to the intervenor the fact that recruitment process subsequently initiated has been completed and intervenor Priya Lahre having already been appointed on 25.08.2018 was not disclosed by the petitioner No. 1 in either the writ petition or while arguing the case on interim relief on 30.10.2018. Further contention of the intervenor is that the appointment of the intervenor was made on 25.08.2018 and the writ petition was filed almost after two months i.e. 24.10.2018. The petitioner did not disclose this fact to the Court both in the pleadings as well as in their arguments. Subsequently the appointment of the Priya Lahre got discontinued in the month of November, 2018 after the interim protection was obtained by the petitioner on 30.10.2018.
7. Aforesaid submission made by the intervenor is not disputed by any of the parties to the writ petition including the petitioner.
8. Given the said facts and circumstances of the case, this Court is of the opinion that interim order obtained by the petitioner No. 1 is therefore by material suppression and petitioner No. 1 therefore would not be entitled for the continuity of service after closure of the academic session 2018-19. The services of the petitioner No. 1 deserves to be discontinued for this reason alone.
9. Accordingly, so far as appointment of the Guest Faculty in subject Botany by the respondent No. 3 College is concerned, the

respondent No. 3 would be at liberty to go in for a fresh recruitment for appointment of Guest Faculty, wherein both petitioner No. 1 as well as the intervenor would have the opportunity to participate, subject to their fulfilling the requisite eligibility criteria and respondent No. 3 would be entitled for appointing the most meritorious candidate in the next academic session that too if at all respondent No. 3 intends to fill up the post by way of Guest Faculty.

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 petitioner No. 2 and accordingly it is ordered that unless there is any complaint received against the performance of the petitioner No. 2, 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 petitioner was engaged.

12. It is however made clear that the protection to the petitioner No. 2 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 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.

14. Given the said facts and circumstances of the case, this Court is of the opinion that interim order obtained by the petitioner No. 1 is therefore by material suppression and petitioner No. 1 therefore would not be entitled for the continuity of service after closure of the academic session 2018-19. The services of the petitioner No. 1 deserves to be discontinued for this reason alone.
15. Given the aforesaid facts, so far as appointment of the Guest Faculty in subject Botany on the respondent No. 3 College is concerned, the respondent No. 3 would be at liberty to give in for a fresh recruitment for appointment of Guest Faculty, wherein both petitioner No. 1 as well as the intervenor would have the opportunity to participate, subject to their fulfilling the requisite eligibility criteria and respondent No. 3 would be entitled for appointing the most meritorious candidate in the next academic session that too if at all respondent No. 3 intends to fill up the post by way of Guest Faculty.
16. With the aforesaid observations, the present writ petition stands disposed off.

Sd/-
(P. Sam Koshy)
Judge

Rohit