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HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 4157 of 2020

- Vicky Pal S/o Shri Prahlad Pal Aged About 24 Years Occupation Guest Teacher Technical Assistant Government Eklavya Adarsh Avasiya Vidhyalaya, Podidih, Khadagawa, District Korea, Chhattisgarh R/o H. N. 134, Ward No. 6 Pariyojna Colony Baikunthpur, District Korea, Chhattisgarh,

---- Petitioner

Versus

1. State Of Chhattisgarh Through Principal Secretary, Tribal Welfare Development Department, Mantralaya, Indiravati Bhawan, New Raipur, District Raipur, Chhattisgarh

2. Commissioner Chhattisgarh State Level Tribal Welfare, Awasiya Evam Ashram Shaikshnik, Sansthan Samiti, Indravati Bhawan, Atal Nagar, Nawa Raipur, District Raipur, Chhattisgarh

3. Assistant Commissioner Tribal Welfare And Development Department, District Korea, Chhattisgarh

4. The Collector Office Of The Collector District Korea, Chhattisgarh,

5. Principal Government Eklavya Adarsh Avasiya Vidhyalaya, Podidih, Khadagwa, District Korea, Chhattisgarh

---- Respondents

For Petitioners : Shri Rupesh Shrivastava, Advocate

For Respondents/State : Ms. Richa Shukla, Dy. G.A.

Hon'ble Shri Justice Goutam Bhaduri

Order

14/10/2020

Heard.

1. The present petition is against the order dated 21.09.2020, wherein the fresh advertisement has been issued for appointment of Guest Teacher under the Respondent No. 5. and the advertisement is made by Respondent

No. 2.

2. Learned counsel for the petitioners would submit that the petitioners are working as Guest Teacher in the school since 2018-2019 and in the earlier occasion also the dispute arose when the advertisement was made and it was observed by the coordinate bench of this Court in WPS No. 6633 of 2018 on 05.10.2018, that the guest teachers shall not be removed by another set of Guest Teachers. It is further contended that the petitioners were lastly appointed as Guest Teachers for the last session i.e. 2019-2020 and again when the session is coming to end fresh advertisement has been issued for appointment of Guest Teachers.

3. The contention of the petitioners is that the petitioners have undergone a due process of selection for being appointed as a Guest Teacher and that the services of the petitioners also were satisfactory as there is no complaint 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 Teachers under the respondent No.5 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. 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/2. 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. 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 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."

7. 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 complaint received against the performance of the petitioners, the respondents are restrained from going in for any fresh recruitment of a Guest Teacher for the said subject under the respondent No.5- against which the petitioners were engaged.

8. 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 Teachers. 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. The remuneration of the guest teachers shall be guided by the fresh set of payment which may be decided by the State as there cannot be two sets of payments for the same post.

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

Sd/-

(Goutam Bhaduri)
Judge

Jyoti