

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 5106 of 2020**

Mithlesh Kumar Kaushik S/o V.R. Kaushik Aged About 30 Years R/o Bihari Colony, Ward No. 32, New Khurshi Para, Bhilai, District Durg Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Employment And Training Mahanadi Bhawan, Mantralaya, Capital Complex, Naya Raipur, District Raipur Chhattisgarh.
2. Director Employment And Training, Directorate, Chhattisgarh, Raipur, District Raipur Chhattisgarh.
3. Principal Shaheed Bhugunandan Choudhary Government Industrial Training Institute, Devbhog, District Gariyaband Chhattisgarh.

---- Respondents

For Petitioner	:	Mr. Shobhit Koshta, Advocate
For State	:	Mr. Mateen Siddiqui, Deputy A.G.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****07/12/2020**

1. Prayer in the present writ petition is for quashment of the advertisement (Annexure P-2).
2. The said advertisement has been issued by the office of the Joint Director (Training), Industrial Training Institutes, Regional Office, Ambikapur, calling in for candidates intending to fill up the posts of Guest Lecturer/Guest Teacher in different fields at Industrial Training Institute, Ambikapur.
3. Contention of the Counsel for the Petitioner is that the Petitioner before this Court had also participated in the similar recruitment process in the year 2014 to 2015 and have been appointed. That

the services of the Petitioner are satisfactory as on date. No adverse communication has been made against the Petitioner till date. The Petitioner is continuously working with the Respondents also is not in dispute.

4. Counsel for the Petitioner further submits that admittedly the status of the Petitioner is also of Guest Lecturer. When the order of appointment was passed, it was specifically mentioned that the recruitment of the Petitioner was for one academic session or till the posts are filled up by way of regular or contractual appointments under the rules of the State Government. In this respect the Petitioner was also made to swear an undertaking that he shall not make any claim and he shall not be permitted to raise any claim for the said posts subsequently. Further, that he is willing to serve the establishment as long as the sanctioned vacant posts are not filled up either by regular or contractual appointments. Such undertaking has been given by the Petitioner.
5. Counsel for the Petitioner also submits that contrary to the aforesaid undertaking and the assurance given, the Respondents have now issued the impugned advertisement, Annexure P-1, for replacing the Petitioner with another set of Guest Lecturers for no rhyme or reason whatsoever spelt out either in the reply or in the advertisement. He next submits that the Petitioner has been discharging his duties without any complaint whatsoever and that the Respondents could not have issued a fresh advertisement calling in for fresh candidature of persons for filling up of the posts by way of Guest Lecturers which is being performed by the

Petitioner when the appointment itself was made for a fixed tenure and also till the appointments are made by way of regular or contractual appointment.

6. Counsel for the Petitioner relies upon the decision of the Supreme Court rendered in the case of **State of Haryana & Others v. Piara Singh & Others [1992 (4) SCC 118]**, wherein the Supreme Court for the first time had enunciated the principle that ad-hoc and temporary employees should not be replaced by another set of ad-hoc and temporary employees but should be replaced only by way of regular recruitment/appointment. The same principle has been further reiterated by the Supreme Court in the case of **Dr. Chanchal Goyal (Mrs.) v. State of Rajasthan [2003 (3) SCC 485]**, wherein in paragraph 8 again the Supreme Court held that ad-hoc and temporary employees should not be replaced by another set of ad-hoc and temporary employees. With the aforesaid analogy laid down by the Supreme Court, the Petitioner has sought for the quashment of the advertisement, Annexure P-1.
7. Counsel for the State however opposing the petition submits that the Petitioner in the instant case is admittedly a Guest Lecturer and that no substantive right has been created in his favour, seeking for continuation of his employment beyond an academic session. According to the Counsel for the State, once when the academic session is over, they have now thought of filling up of the posts by fresh advertisement with an intention that they may this year get better candidates for the said post as Guest Lecturer for the coming session and therefore the State has issued the said

advertisement and it cannot be said to be bad in law or illegal in any manner.

8. True it is, that the Petitioner's status is that of a Guest Lecturer but that does not mean that he do not has any right. There is always a legitimate expectation of the Petitioner that since the filling up of the posts has not been initiated by way of a regular appointment or by contractual appointments, the Petitioner would be permitted to continue.
9. The undisputed fact is that the Petitioner was given appointment only on undertaking given by him pursuant to an advertisement by the Respondents. In the undertaking which was made to be furnished by the Petitioner, he was made to undertake that his appointment would be till the post is filled up by regular/contractual appointment. This by itself clearly gives an indication that unless the Respondents fill up the sanctioned vacant post by either regular recruitment or by way of contractual appointment, the Petitioner would continue as Guest Lecturer. On the practical aspect also the fact that the Petitioner is discharging the duties of Guest Lecturer for last more than 2-3 years, itself is a good ground for permitting the Petitioner to continue on the said posts as a Guest Lecturer, simply for the reason of his 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, so far as the petitioner's post is concerned, subject to the fact that the advertisement under challenge has not been finalized and the appointment orders have not been issued in favour of any other person.
11. It is directed that the Respondents would not be entitled for filling up the posts of Guest Lecturer by replacing the Petitioner unless the Respondents come up with a stand that the services of the Petitioner 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.
12. The writ petition accordingly stands finally disposed of.

Sd/-
(P. Sam Koshy)
Judge