

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No.322 of 2019**

1. State of Chhattisgarh Through The Principal Secretary, Tribal Welfare Development Department, Mantralaya Mahanadi Bhawan, Naya Raipur, District Raipur Chhattisgarh.
2. The Commissioner Chhattisgarh State Level Tribal Welfare, Awasiya, Evam Ashram Shaikshshnik, Sansthan Samiti, Indrawati Bhawan, Atal Nagar, Nawa Raipur, District Raipur Chhattisgarh.
3. The Assistant Commissioner Tribal Welfare And Development Department, Gourela- Pendra- Marwahi, Chhattisgarh.
4. The Collector Office Of The Collector, District- Gourela- Pendra- Marwahi Chhattisgarh.
5. The Principal Government Eklavya Adarsh Avasiya Vidhyalaya, Dongariya, District Gourela- Pendra- Marwahi Chhattisgarh.

---- Appellants**Versus**

1. Akhilesh Kumar Mishra S/o Shri Phekulal Mishra Aged About 30 Years Occupation- Guest Teacher (T.G.T. English), Government Eklavya Adarsh Avasiya Vidhyalaya, Dongariya, District Gourela- Pendra- Marwahi, Chhattisgarh. R/o Village Raweli, Post- Vijaypur, Tehsil- Lormi, District- Mungeli Chhattisgarh.
2. Bhimsen Sonwani S/o Shri Tulsi Prasad Aged About 27 Years Occupation- Guest Teacher (T.G.T. English), Government Eklavya Adarsh Avasiya Vidhyalaya, Dongariya, District Gourela- Pendra- Marwahi, Chhattisgarh. R/o Village Bargawan, Post- Bharridand, Tehsil- Marwahi, District- Gourela- Pendra- Marwani, Chhattisgarh.

---- Respondents

(Cause-title taken from Case Information System)

For Appellants/State	: Mr. Siddharth Dubey, Deputy Government Advocate
For Respondents	: Mr. Swajit Singh, Advocate

Hon'ble Shri Arup Kumar Goswami, Chief Justice**Hon'ble Shri Sanjay K. Agrawal, Judge****Judgment on Board****Per Arup Kumar Goswami, Chief Justice****25.10.2021**

Heard Mr. Siddharth Dubey, learned Deputy Government Advocate for the appellants. Also heard Mr. Swajit Singh, learned counsel appearing for the respondents.

2. This writ appeal is presented against an order dated 04.11.2020 passed by learned Single Judge in Writ Petition (S) No.4573 of 2020 allowing the writ petition with the following operative directions, which are at paragraphs 7 and 8 of the order under assailement.

3. Paragraphs 7 and 8 are extracted herein-below for better appreciation:

“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.”

4. The writ petitioners approached this Court assailing an advertisement dated 21.09.2020 inviting applications for recruitment of Guest Teachers in respect of 71 Eklavya Adarsh Awasi School. Case of the writ petitioners was that after undergoing a due process of selection for being appointed as Guest Teachers, they were selected as Guest Teachers for the academic session 2019-20 and that their performance was also satisfactory. In the background of aforesaid factual matrix, it was contended that inviting applications for Guest Teachers for the subsequent year for the very same subjects which the petitioners were teaching was contrary to the decision of Hon'ble Surpeme Court in **State of Haryana & Others v. Piara Singh and Others** reported in **(1992) 4 SCC 118**.

5. Mr. Siddharth Dubey, learned counsel for the appellants submits that the impugned judgment was delivered by the learned Single Judge without affording an opportunity to the State to rebut the contention and therefore, the order is liable to be set aside on the ground of violation of principles of natural justice.

6. Shri Swajit Singh, learned counsel for the respondents/writ petitioners, on the other hand, submits that the learned Single Judge relied on an established proposition of law and therefore, even if any opportunity was granted, the same would not have enured to the benefit of the appellants. Therefore, in the facts and circumstances of the case, no prejudice can be said to have been caused to the appellants, he submits.

7. We have considered the submissions of learned counsel for the parties and have perused the material on record.

8. Though, it is true that the writ petition came to be disposed of without affording an opportunity to the State to file its response, what cannot be lost sight of the fact is that the law is well-settled that an *ad hoc* employee cannot be replaced by another *ad hoc* employee and that the position of Guest Teachers is

akin to an *ad hoc* employee. The learned Single Judge had also noted that the order of appointment of the writ petitioners had a clause mentioning that the appointment so made are till an alternative arrangement is made by way of regular recruitment/contractual/transfer. It is not pleaded in the writ appeal that there are any complaints against the writ petitioners or that their service was otherwise not satisfactory. Therefore, in our considered opinion, even though the appellants were not given an opportunity of contesting the writ petition, under the facts and circumstances of the case, according to our perception, no prejudice was caused to the appellants.

9. In that view of the matter, we see no good ground to interfere with the order of the learned Single Judge and accordingly, the writ appeal being devoid of merit, is dismissed. No costs.

Sd/-
(Arup Kumar Goswami)
Chief Justice

Sd/-
(Sanjay K. Agrawal)
Judge