

IN THE HIGH COURT OF ORISSA AT CUTTACK**W.P.(C) No.12250 of 2022**

Siba Prasanna Pathy **Petitioner**
Mr. S.P. Nath, Adv.
-versus-
State of Odisha and Ors. **Opposite**
Parties
Mrs. Suman Pattnaik, AGA

CORAM:
Mr. JUSTICE S.K. PANIGRAHI

Order
No.

ORDER
31.05.2022

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1. This matter is taken up through hybrid mode.
2. Heard Learned Counsel for the Petitioner and Learned Counsel for the Opposite Parties.
3. The petitioner has filed the present writ application challenging the inaction of the Opposite parties, more particularly the Opposite Party no.3 (Registrar, Khallikote Unitary University, Berhampur) in issuing the impugned advertisement dated 30.03.2022 for selection to the post of Guest Faculty and further challenges the order of removal dated 30.04.2022.
4. Shorn of unnecessary details, the substratum of the matter presented before this Court is that the petitioner having the requisite qualification was appointed as Guest Faculty in PG Department of History on 01.08.2017 and he continued against the said post till 30.04.2022. However, all of a sudden, the Opp. Party No.3 issued an advertisement on 30.04.2022 for selection of Guest Faculty in various

disciplines including the discipline of History. After issuance of such advertisement, the petitioner along with other Guest Faculties who are working under the Opp. party No.3 made objections that they had the requisite qualification as laid down in the advertisement and there is no purpose/ object of issuing another advertisement. The Opp. Party No.3 further issued a notice on 30.04.2022 wherein the Heads of the Department were requested to inform their respective Guest Faculties over phone not to attend the duties w.e.f. 01.05.2022. Aggrieved by the said orders, the aforesaid case has been filed by the petitioner.

5. Learned Counsel for the petitioner Mr S.P. Nath, submits that the action of the Opp. Parties in replacing one set of Guest Faculty with another set of Guest Faculty is illegal, arbitrary and is contrary to the well-settled position of law. Moreover, while disengaging the service of the petitioner principle of natural justice has not been followed and therefore, the order of dismissal is bad in the eye of law.
6. Learned Counsel for the petitioner has further relied on the case of **Manish Gupta and Ors. vs. President, Jan Bhagidari Samiti and Ors**¹ wherein it has been clearly held that Guest Lecturer cannot be replaced with another set of Guest Lecturer and further held that Guest Lecturers would be allowed to continue till regularly selected

¹ Civil Appeal Nos.3084-3088 of 2022 disposed of 21.04.2022

candidates are appointed. He has contended that the said judgment is squarely applicable to the case of the present petitioner and therefore, the impugned advertisement is liable to be set aside.

7. Mrs. Suman Pattnaik, Learned Additional Government Advocate submits that the petitioner does not have any vested right to continue in the said post. She relied on the decision of **Director, Institute of Management Development, U.P. Vs. Pushpa Srivastava (Smt.)**², wherein the Apex Court held that since the appointment was purely on contractual and ad hoc basis on consolidated pay for a fixed period and terminable without notice, when the appointment came to an end by efflux of time, the appointee had no right to continue in the post and to claim regularization in service in the absence of any rule providing for regularization after the period of service. A limited relief of directing that the appointee be permitted on sympathetic consideration to be continued in service till the end of the concerned calendar year was issued. This Court noticed that when the appointment was purely on ad hoc and contractual basis for a limited period, on the expiry of the period, the right to remain in the post came to an end. This Court stated that the view they were taking was the only view possible and set aside the judgment of the High Court which had given relief to the appointee.

²1992 (3) SCR 712

8. Similarly, Supreme Court in the case of **Secretary, State Of Karnataka vs Umadevi**³ held that:

*“23. In **Madhyamik Shiksha Parishad, U.P. Vs. Anil Kumar Mishra and Others**⁴, a three judge bench of this Court held that ad hoc appointees/temporary employees engaged on ad hoc basis and paid on piece-rate basis for certain clerical work and discontinued on completion of their task, were not entitled to reinstatement or regularization of their services even if their working period ranged from one to two years. This decision indicates that if the engagement was made in a particular work or in connection with particular project, on completion of that work or of that project, those who were temporarily engaged or employed in that work or project could not claim any right to continue in service and the High Court cannot direct that they be continued or absorbed elsewhere.”*

She further submits that a Guest Lecturer is like a temporary appointee, and hence he has no right to the post **vide State of Uttar Pradesh v. Kaushal Kishore Shukla**⁵, **Triveni Shankar Saxena v. State of U.P.**⁶.

9. She further submits that there is no rule of law that a temporary appointee has a right to continue till a regularly selected candidate is available. If a regular selection does not take place for ten years, can the petitioner continue for 10 years, in that case the sanctity of appointment of guest faculty shall be destroyed. This is not the correct legal position, but

³ (2006) 4 SCC 44

⁴ AIR 1994 SC 1638

⁵ (1991) 1 SCC 691,

⁶ AIR 1992 SC 496, etc.

the legal position is clear that a temporary appointee has no right to the post. In other words, he has no right to continue even for one day, far less having a right to continue till the regularly selected candidate is available. The service of a temporary appointee can be terminated at any time because he has no right to the post. She strongly disagrees with the contentions of the learned counsel for the petitioner that the Guest Lecturers have a right to continue till the regular selection is made.

10. Heard the counsel for the parties. As submitted by the Learned Counsel for the State, there is no rule of law that a temporary appointee has a right to continue till a regularly selected candidate is available. The submissions of the Learned Additional Government Advocate seems to be the correct position of law, even if contrary view might have been there in a particular case as has been referred to by the Counsel for the petitioner citing as a binding precedent. If in a particular case, having considered the peculiar facts and circumstances of the case and the Appellate Court might issue directions without laying down any principle of law, in that case such directions cannot be treated as precedents. There is always a danger in treating them as precedents even though it is a judicial utterances based on the facts of particular case.

11. One cannot lose sight of the concept of circumstantial flexibility, one additional or different fact may make a world of difference between

conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is improper.

- 12.** The following words of Lord Denning in the matter of applying precedents have become quite authoritative over the years:

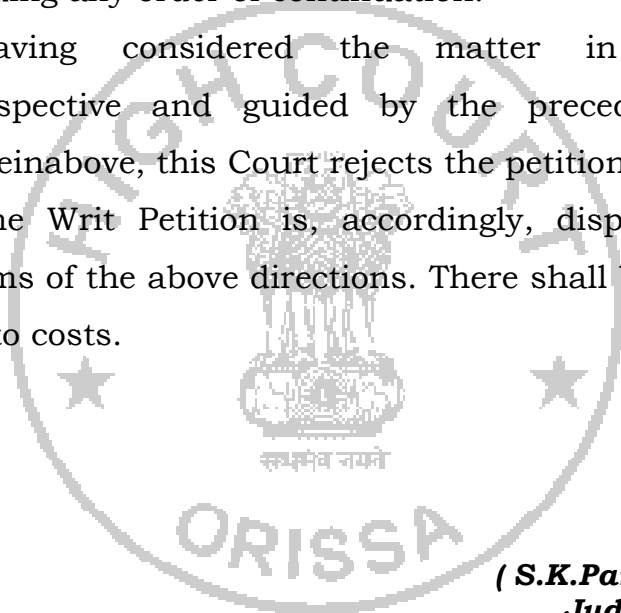
"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive. ????. Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it".

- 13.** Hence, there cannot be any absolute rule or principle that one ad hoc or temporary appointee can never be replaced by another *ad hoc* or temporary appointee. For example, if a temporary appointee in service is incompetent, can he not be allowed to replace with a competent or more competent person. This Court sees no reason why the competent person cannot be appointed in place of the incompetent person, even if both appointments are ad hoc or temporary appointees.

- 14.** At the same vein, this Court is of the view that appointment of Guest Lecturers on a large scale without regular appointment of teachers is likely to make a huge dent on the quality of the teaching and hugely hamper the interests of the students. Further, the guest faculty/temporary teachers will not be able to work with a free mind and there will always be a fear of termination at the whims and fancy of the principal or Vice-Chancellors. This Court believes that students of Odisha deserve good teachers and quality education. Undeniably, the *ad hocism* cracks in the myth of a better and quality education.
- 15.** On the other hand, these ad hoc teachers are unnecessarily subjected to arbitrary 'hiring and firing' policy. Most of the ad hoc teachers are educated unemployed and they are compelled to accept these jobs with a miserably low pay and on pathetic service conditions. The ad hoc teachers and teaching regime is a pointer to the facts that the Government is exploiting the situation sans a sound personnel policy and hits by Articles 14 and 16 of the Constitution of India. Such a *status quoist* approach directly contradicts the essence of a State. It is imperative that the State Government should appoint more and more regular teachers in the educational institutions of the State and adhocism need to be shifted to a permanent system.
- 16.** From the conspectus of factual matrix, this Court is of the opinion that the position of a guest lecturer, being contractual in nature cannot be vested with the

right of continuation. The appointment and tenure of the individual in this case is based on the policy of the institution and the Courts cannot interfere in such matters. It is the prerogative of the institution to allow him to continue or discontinue on the basis of their performance, conduct etc. as it is not a regular post. The so-called equity arising out of the temporary employment and seeking continuation, per se does not sustain, as court should be precluded from issuing any order of continuation.

- 17.** Having considered the matter in aforesaid perspective and guided by the precedents cited hereinabove, this Court rejects the petition.
- 18.** The Writ Petition is, accordingly, disposed of in terms of the above directions. There shall be no order as to costs.



(S.K.Panigrahi)
Judge

BJ