

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.15372 of 2022

Dr. Bibhuti Patro *Petitioner*
Mr. Suravi Mohanty, Adv.
-versus-
State of Odisha & Anr. *Opposite Parties*
Mr. D. Mund, AGA

CORAM:
DR. JUSTICE S.K. PANIGRAHI

Order
No.
03.

ORDER
23.12.2022

1. This matter is taken up through hybrid mode.
2. The Petitioner, in the abovementioned Writ Petition, has challenged the action of the Opposite Parties in issuing the advertisement dated 30.03.2022 issued by Khallikote University, Konisi, Berhampur, Ganjam for the selection/appointment of guest faculties in its different departments on the grounds that the same is arbitrary and bad in law as it failed to conform to the notification dated 20.04.2022 issued by Department of Higher Education, Government of Odisha. Moreover, the petitioner is aggrieved as he was disengaged over a phone call without any advance notice or reason for his disengagement.

I. FACTUAL MATRIX OF THE CASE:

3. The present writ petitioner was a guest faculty in the Department of Economics in Khallikote University and was imparting offline and online classes to the students since 2015. The tenure of the guest faculties is for one year. Though it has been enhanced by the Higher Education Department from time to time by way of notification in that regard since no regular appointments have been made to cater to the requirement of teaching institutions. Be that as it may, the guest faculties were being paid Rs.500/ per class with maximum amount of Rs.25000/- for 50 classes per month.
4. It was decided by the university authority that the existing guest faculties be replaced to appoint new guest faculties by inviting application from eligible candidates for the aforementioned engagement. The advertisement dated 30.03.2022 invited applications for a walk-in-interview for the appointment of guest faculties in 22 disciplines offered by the University, including Economics, for the academic year 2022-23 for one year only.
5. The walk in Interview was commenced as per the schedule on 13.04.2022 and finished on 27.04.2022.
6. However, before the completion of the walk-in-Interview, Department of Higher Education, Government of Odisha,

issued Notification No.HE-GCET-MISC-0118-2020/16200/He dated 20.04.2022 wherein it was instructed that the existing guest faculties be allowed to continue till 31.08.2022 and the process of selection of new batch of guest faculty to be completed in the month of July-August, 2022 for two years starting from 01.09.2022. The notification was issued taking into account that with the physical reopening of classrooms, it may become difficult to complete the required classes with insufficient number of faculty.

7. Nevertheless, the university authority continued with the process and completed the walk-in-interview(s). The present petitioner also participated in the interview for the selection of guest faculty for the subject-Economics but he was not successful in the selection. Thereafter, the university authority disengaged the existing faculties, including the petitioner, on 02.05.2022 via phone call and appointed the newly selected faculties for one year in response to the impugned advertisement.
8. The present writ petitioner mainly assails the impugned advertisement on the ground that the impugned advertisement is arbitrary, illegal, without jurisdiction and non-est in the eye of law for it violated the aforementioned government notification.

II. PETITIONER'S SUBMISSIONS:

9. Learned counsel for the Petitioner earnestly made the following submissions in support of their contentions:
10. The petitioner submitted that the aforementioned notification dated 20.04.2022 allowed the existing Faculties to continue till 31.08.2022 but the University authorities arbitrarily disengaged the existing guest faculties defying the Government Order. For that, the University authorities have distorted and vitiated the policy decision taken by the Department of Higher Education, Government of Odisha by selecting and engaging a new set of guest faculty. This action is without jurisdiction, arbitrary and illegal and cannot be respected in the eye of law.
11. The petitioner also submitted that the aforementioned notification instructed that the selection and engagement of new Guest faculties shall be made for 2 years but the opposite party No. 2 has engaged the new guest faculties for only one year in defiance of the policy decision of Government which renders this selection and engagement unsustainable in the eye of law, thus, liable to be quashed.
12. The petitioner alleged that the opposite party No. 2 has prepared a faulty & fallacious select list against the direction of law in order to accommodate the choicest candidates in the advertised posts.

III. OPPOSITE PARTIES' SUBMISSIONS:

13. Per *contra*, Learned counsel for the Opp. party intently made the following submissions:
14. It is submitted that the petitioner was engaged as a guest faculty which is contractual in nature. His engagement also ended as per the term of the engagement. It is well settled under the law that a contractual employee is not vested with the right to continue beyond the period for which one has been engaged. *Ergo*, the present petitioner has no locus standi to challenge the disengagement/selection of Guest Faculty or the reinstatement of the disengaged guest faculties.
15. The counsel for the Opposite Party No. 2 shed light on the engagement and disengagement of the petitioner as guest faculty in the said institution. It was submitted that the petitioner was engaged as Guest Faculty in the department of Economics in Khallikote Autonomous College in 2019 as per the guidelines issued by Department of Higher Education, Government of Odisha. But, due to COVID pandemic situation, physical classroom teaching was not possible in any college across the State. However, when the situation stabilized, the Department of Higher Education, Govt. of Odisha vide Letter no.5273/HE dated 03.02.2021 and Letter

no.29466/HE, dated 28.07.2021, allowed the Guest Faculties engaged earlier in the Government Colleges of the State, to continue for physical classroom teaching for a certain period beyond terms of engagement.

16. By efflux of time, in exercise of the power conferred by sub-sections (1) and (2) of the Section 32 of the Odisha Universities Act, 1989, the Govt. of Odisha, Higher Education Department, Bhubaneswar, vide Notification No. HE-UNE POLICY-000102021-20038, dated 11.05.2021, established a new University in the name of Khallikote Unitary University by upgrading the existing Khallikote (Autonomous) College, at Berhampur, with effect from 01.08.2021.
17. It was claimed that taking advantage of the situation, the petitioner continued as Guest Faculty at Khallikote Autonomous College, Berhampur and, thereafter, at Khallikote Unitary University in the department of Economics for a quite considerable period of time. However, his term of engagement ended by 26.04.2022, and he was disengaged accordingly.
18. Under such circumstances, having full authority over the domain of engagement/disengagement of Guest Faculty, the Opposite Party No. 2 has taken necessary steps to disengage the Guest Faculties including the present

petitioner and selection for engagement of Guest Faculty in different departments with an intention to produce brilliant/meritorious students in particular and enhance the excellence in study atmosphere in general. Such disengagement of the petitioner and selection vide Advertisement dated 30.03.2022 and engagement of Guest Faculty by the Opposite Party No.2 is neither arbitrary nor illegal. Due to this reason, the terms mentioned in the aforementioned notification are not applicable for Guest Faculties engaged under Khallikote Unitary University, Berhampur.

19. It was also submitted that a candidate upon being unsuccessful, cannot turn around and challenge the advertisement for the selection. The present petitioner participated in the selection for Guest Faculty in the subject - Economics pursuant to the Advertisement dated 30.03.2022, issued by the Opposite Party No.2. The selection for 22 disciplines including Economics for the academic year 2022-23 for one year was conducted, very smoothly and transparent manner. Moreover, selection through Walk-in-Interview of the Guest Faculty was made by giving due weightage to Carrier (including M. Phil/PhD degree) & Experience in the field, from out of all eligible candidates. And after selection, successful Guest

Faculties were engaged in their respective faculty/subject under certain terms and conditions. The petitioner was unsuccessful in his candidature against the selection for Guest Faculty in Economics and was disengaged accordingly.

IV. ISSUES FOR CONSIDERATION:

20. After having heard learned counsels for both sides, the following issues arise for consideration before this Court:

- A. Whether the impugned advertisement is in contravention to the aforementioned notification issued by Department of Higher Education, Government of Odisha?
- B. Whether the petitioner can claim relief in favour of his candidature against the post of Guest Faculty?

V. ISSUE A: Whether the impugned advertisement is in contravention to the aforementioned notification issued by Department of Higher Education, Government of Odisha?

21. The aforementioned notification reads:

“In inviting reference to the subject cited above, I am directed to say that, as the physical classroom teaching is on full swing in order to complete the courses, the Guest Faculties engaged in Government Colleges of the State in

pursuance of this Department letters referred above, are hereby allowed to continue till 31.08.2022 under the same terms and conditions.

The process for selection of new batch of Guest Faculties should be done in July-August 2022 months, for a two year tenure starting from 01.09.2022 to 31.08.2024. The new Guest Faculties should join by 01.10.2022."

22. Herein, it is not difficult to construe that the aforementioned administrative instruction is merely directory, and not mandatory.
23. Whether an enactment is mandatory or directory depends on the scope and the object of the provision. In this regard, the court finds it imperative to refer to ***Chandrika Prasad Yadav v State of Bihar***¹ wherein the Apex Court held that:

"The question as to whether a statute is directory or mandatory would not depend upon the phraseology used therein. The principle as regards the nature of the statute must be determined having regard to the purpose and object the statute seeks to achieve. If an object of the enactment is defeated by holding the same director, it should be construed as mandatory; whereas if by holding it mandatory serious general inconvenience will be created for innocent persons of the general public without furthering the object of enactment, the same should be construed as directory but all the

¹2004 6 SCC 331

same, it would not mean that the language used would be ignored altogether."

24. According to Jurist William Feilden Craies:²

"When a statute is passed for the purpose of enabling something to be done and prescribes the formalities which are to attend its performance, those prescribed formalities which are essential to the validity of the thing when done are called imperative or absolute, but those which are not essential, and may be disregarded without invalidating the thing to be done, are called directory".

25. From the above-cited authorities, the intent behind the aforementioned notification is clear i.e. to facilitate uninhibited continuation of classes for the completion of course and not to secure the posts of Guest Faculties *per se*. Ergo, the court finds it difficult to adjudge that the impugned advertisement and appointment process of the University stands in contravention to the aforementioned notification.
26. If the appointment process initiated by the University aids in the fulfilment of the object behind the aforementioned notification, it cannot be called illegal or arbitrary but only coincidental to the rule.

²Craies, Statute Law, 5th edn, p 60

VI. Issue B: Whether the petitioner can claim relief in favour of his candidature against the post of Guest Faculty?

27. The petitioner does not have any vested right to continue in the said post. 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.
28. The Supreme Court in the case of *Secretary, State Of Karnataka vs Umadevi*³ held that:

"In Madhyamik Shiksha Parishad, U.P. Vs. Anil Kumar Mishra and Others; 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."

29. 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 be replaced with a competent or more competent person. This Court sees no reason why a competent person cannot be appointed in place of a less competent person, even if both appointments are ad hoc or temporary appointees.
30. Notwithstanding, it is also trite in law that a candidate who has participated in the selection process, upon being unsuccessful, cannot turn around and challenge the advertisement for the selection. This position of law has been time and again reiterated by the Supreme Court.
31. In *Madan Lal v. State of J.K.*,⁴ the Apex Court held as follows:

“Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being concerned respondents herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Upto this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the concerned Members of the Commission who

⁴1995 SCC (3) 486

interviewed the petitioners as well as the concerned contesting respondents. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, that they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview then, only because the result of the interview is not palatable to him he cannot turn round and subsequently contend that the process of interview was unfair or Selection Committee was not properly constituted."

32. In **Chandra Prakash Tiwari v. Shakuntala Shukla**,⁵ it was further observed by the Supreme Court that: -

"34. There is thus no doubt that while question of any estoppel by conduct would not arise in the contextual facts but the law seem to be well settled that in the event a candidate appears at the interview and participates therein, only because the result of the interview is not 'palatable' to him, he cannot turn round and subsequently contend that the process of interview was unfair or there was some lacuna in the process."

33. The petitioner was perfectly aware about the Government notification dated 20.04.2022. He should have lodged his objections or should have submitted a complaint

⁵(2002) 6 SCC 127

immediately but the petitioner participated in the walk-in-interview. It is only when the petitioner was declared unsuccessful in the final result, he approached this Court. The said conduct itself indicates that the petitioner was all along satisfied with the appointment process that had been held by the respondents and only after having been declared failed has approached this Court which is legally impermissible in the eyes of law.

34. At this juncture, this Court would like to reiterate its my view concerning appointment of Guest Lecturers on a large scale without regular appointment. This Court had voiced its concerns in this Court's pronouncement in *Siba Prasanna Pathy v. State of Odisha & Ors.*⁶ that the trend of contractualization of teachers bears the risk of significantly impairing the quality of education and the interests of 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 administration. 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.

⁶W.P.(C) No. 12250 of 2022

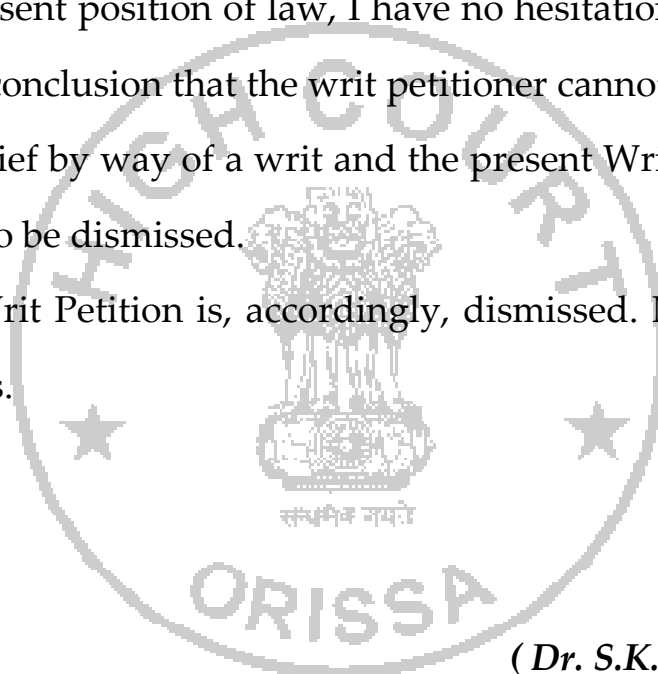
35. On the other hand, these ad hoc teachers are unnecessarily subjected to arbitrary 'hiring and firing' policy. Most ad hoc teachers join these posts to escape the peril of unemployment and are forced to accept these jobs at miserably low wages and poor conditions of service. The ad hoc teachers and 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.
36. Teacher motivation and efficacy are paramount for better learning, and so key to any discourse on quality in education. Among the most critical factors connected to motivation are the terms of service. 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.

VII. CONCLUSION:

37. As such, the impugned advertisement is legal, fair and not in contravention with the aforesaid notification. The Opposite Parties have not committed any illegality, nor have they promulgated the impugned advertisement in a manner which renders it discriminatory against anyone or

in discordance with the state provisions, or the present position of law.

38. Needless to say, the persons who participated in the selection process after having accepted the terms and conditions of the selection, cannot challenge the said process subsequently.
39. In light of the aforesaid discussion and having regard to the present position of law, I have no hesitation in coming to the conclusion that the writ petitioner cannot be granted any relief by way of a writ and the present Writ Petition is liable to be dismissed.
40. This Writ Petition is, accordingly, dismissed. No order as to costs.



(Dr. S.K. Panigrahi)
Judge

B.Jhankar