
(2019) 09 MP CK 0105

In the Madhya Pradesh High Court

Case No : Writ Petition No. 19713 Of 2019

Jameer Khan

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 27-09-2019

Acts Referred:

Citation : (2019) 09 MP CK 0105

Hon'ble Judges : Vijay Kumar Shukla, J;Ravi Shankar Jha, J

Bench : Division Bench

Advocate : Kamlesh Dwivedi, Bhupesh Tiwari

Final Decision : Disposed Of

Judgement

The petitioner, who claims to be working as Guest Teacher since last academic session 2018-2019, has filed the present petition challenging the circulars/orders of the respondents dated 26-02-2019, 30-03-2019 and 04-7-2019 whereby the respondents have started fresh process of registration of candidates for engagement as guest teachers against vacant posts in the Government schools. The petitioner has also prayed for a direction to the respondents to allow the petitioner to continue as Guest Teacher in the School till regular appointment is made.

The bone contention of the petitioner is that a Guest Teacher cannot be replaced by appointing another Guest Teacher, therefore, the impugned action of the respondents is liable to be set aside, and keeping in view his experience as Guest Teacher and the period spent thereon, he is entitled to continue till regular appointment is made.

The learned counsel for the petitioner also referred to an interim order dated 17-07-2019 passed by a Co-ordinate Bench of this Court in W.P. No.12892/2019 after referring to the judgement in the case of Saurabh Singh Baghel and others vs. State of M.P. and others, 2019(1) MPLJ 643.

The learned counsel for the State submitted that the Circulars dated 26-02-2019 and 04-7-2019 are issued in reference to the earlier Circulars of the State Government, dated 9-11-2016 and 7-7-2018. He further submitted that the issues raised in the present petition have already been decided finally by the Division Bench in the case of Saurabh Singh Baghel and others (supra).

No other issue has been raised before this Court, while assailing the Circulars dated 26-02-2019, 30-03-2019 and 04-7-2019 except that the petitioner who is working as Guest Teacher, cannot be compelled to undergo online process for engaging as Guest Teacher in the Primary School, because he has been working as Guest Teacher for the last many years and, therefore, he has a right to continue on the said post, till regular appointment is made without any further screening.

The issues raised in the present petition have already been decided finally by a Division Bench of this court in the case of Saurabh Singh Baghel(supra). In the said batch of petitions, the grievance of the petitioners was that all the guest teachers who have been working for many years have been disengaged, because they are not found to be in the merit list as there are more meritorious candidates who have applied for appointment as Guest Teachers and they have a right to continue in the school in which they were initially engaged, and by the process adopted by the respondents they cannot be shifted to another place. In those petitions, a challenge was also made to the circular dated 07-07-2018 issued by the State Government regarding engagement of the guest teachers by adopting a transparent method of engaging the guest teachers on the basis of merit.

The Division Bench in the case of Saurabh Singh Baghel(supra) held in para-25 that the method of engaging Guest Teachers in pursuance to the circular dated 07-07-2018 cannot be said to be illegal and arbitrary. It was also held in para-15 that no direction can be issued that the Guest Teachers, who are not meritorious enough should be engaged for teaching the students of Government schools.

The relevant paras 15, 22 and 25 are reproduced as under :

"15. We have heard learned counsel for the parties and find that no direction can be issued that the Guest Teachers, who are not meritorious enough, should be engaged for teaching the students of Government Schools.

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22. We do not find that the policy of replacement of Guest Teachers with another set of Guest Teachers is neither proper nor justified as the Guest Teachers are engaged to meet out the emergent situation and that, it cannot be a rule that the Guest Teachers should continue year after year. It is also equally true that the students of school are entitled to quality education and not to be taught by the teachers who are not meritorious when

more meritorious teachers are available for appointment. The right of the

petitioners to be engaged as Guest Teachers is equitable right. They are engaged for a day and for limited periods. In terms of revised order F No.44-13/2018/20-2 dated 3-10-2008, the Guest Teachers have been made to take three classes per day for which honorarium has been fixed as Rs.90/-, Rs.75 and Rs.50/- per period for Guest Teachers Grade-I, II and III respectively and maximum amount paid per month is Rs.9000/-, Rs.7000/- and Rs.5000/- respectively. Such equitable right entitles them to have equal protection but not that the merits of the aspirants can be done away with so as to allow the candidates with lower score card to be appointed as Guest Teachers. It will be antitheses to the right of education of the students of the Government Schools. We have to balance the right of teachers such as the petitioners and the students who are taught by the teachers engaged as Guest Teachers. The right of education under the Right to Education Act is not to protect the teachers but to grant education to the students. The primary object is that the child should study. If he is to study, he is entitled to the best possible teachers to teach him. Therefore, the candidates, who are not able to secure appointment on the basis of comparative merit out of over 2,00,000 aspirants, cannot claim any right to continue as Guest Teachers. Therefore, if 25% of Guest Teachers are not able to seek appointment despite there being transparent, non-discriminatory criteria framed by the State Government, it cannot be said that the action of the State Government is justified.

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25. The State has large number of schools and also equally large number of students. Such large numbers of students are to be provided with quality education. It is the responsibility of the State that the teachers, who shape the future of country, are meritorious and appointed through a transparent system and not by the process adopted by the Local School Level Committee or the Parents Teacher Association. The method of engaging Guest Teachers in pursuance to Circular dated 07.07.2018 cannot be said to be illegal or arbitrary, which may warrant interference in the writ jurisdiction of this Court."

The following directions were issued in the said case in para 27 which are reproduced as under:

"27. Since there are large number of vacancies in the Government Schools of the State, which is evident from the fact that this year 70,000 Guest Teachers are to be engaged, therefore, to give effect to Right to Education Act and that there should not be any ad hocism in engaging the teachers for teaching students in the schools of the State, we issue the following directions:-

(i) The State Government shall frame policy for filling the posts of Teachers in the State in a phased manner, to be completed in five years after framing of the policy.

(ii) Such policy shall be uploaded on the website of the State Government within four months from the date of order of this Court;

(iii) The vacancies, if any, of the Guest Teachers engaged in pursuance to the Circular dated 07.07.2018, shall be filled up on the basis of merit list school-wise already prepared;

(iv) If the merit list is exhausted, then fresh options would be invited school-wise from the registered candidates in the same manner as has been done in pursuance of circular dated 07.07.2018.

In view of the above, we deem it proper to dispose of the present petition with liberty to the petitioner to submit a representation before the respondents within a period of 10 days from today. If such a representation is submitted by the petitioner within the aforesaid period, the competent authority shall consider and decide the representation, keeping in view the directions issued by this Court in the case of Saurabh Singh Baghel (*supra*). It is hereby made clear that we have not expressed any opinion on the merits of the case.

Accordingly, the writ petition is disposed of.