

(2017) 02 MP CK 0185
In the Madhya Pradesh High Court
Case No : 386 of 2016

Sabu Lal Gond

APPELLANT

Vs

State of Madhya Pradesh and Ors.

RESPONDENT

Date of Decision : 08-02-2017

Acts Referred:

Citation : (2017) 02 MP CK 0185

Hon'ble Judges : N.K. Gupta, Anand Pathak

Bench : Single Bench

Advocate : Vishal Mishra, Anil Mishra, MPS Raghuvanshi, ?Prashant Sharma,
Alok Katare, Gaurav Mishra

Judgement

1. The present order shall govern the disposal of Writ Appeals No. 386/2016, 387/2016, 49/2017, 52/2017 and 53/2017, whereby a similar fact in issue is to be considered in all such appeals.

2. In Writ Appeals No. 386/2016 and 387/2016, the State of Madhya Pradesh and Jan Bhagidari Samiti have challenged the judgment dated 29.09.2016 passed by the single Bench of this Court in W.P. No. 4716/2016, whereby the petitioners of that petition were granted relief that they are entitled to continue to work on their respective posts till regular selections are made and

they are also entitled to get salary in accordance with University Grant Commission circular issued in February, 2010.

3. Writ Appeals No. 49/2017 and 52/2017 have been filed by Jan Bhagidari Samiti and the State against the judgment dated 29.09.2016 passed in W.P. No. 5326/2016, where the petitioners of writ petition were granted a similar relief as it was granted in W.P. No. 4716/2016.

4. W.A. No. 53/2017 has been preferred by the State against the judgment dated 29.09.2010 passed by the single Bench of this Court in W.P. No. 5145/2016, where the concerned petitioners were granted the similar relief as of W.P. No.

4716/2016.

5. Facts of the case, in short, are that the various petitioners were appointed as guest faculty in the various subjects in various colleges by the concerned Jan Bhagidari Samiti for a period of 11 months according to their subjects. Thereafter, Jan Bhagidari Samiti has floated an advertisement for filling of such posts for the academic year 2015-2016. The petitioners have challenged the advertisement issued by the concerned Jan Bhagidari Samiti claiming parity with the regular faculty and, therefore, it was prayed that they be permitted to continue to work on their respective posts till regular selections are made and to get equivalent pay to that of a regular faculty.

6. The single judge after considering the arguments advanced by the parties accepted all the three writ petitions and granted the relief as mentioned above.

7. We have heard the learned counsel for the parties at length.

8. In these cases, the relief sought by the petitioners depends upon the judgment passed by the Apex Court in case of "Hargurpratap Singh Vs. State of Punjab and others" [(2007) 13 SCC 292], in which it is held that one ad-hoc arrangement

should not be required to be displaced by another ad-hoc arrangement, which is not at all appropriate. A small portion of Para 3 of that judgment is reproduced as under:- ".....It is clear that though the appellants may not be entitled to regular appointment as such it cannot be said that they be not be entitled to the minimum of the pay scale nor that they should not be continue till regular incumbents are appointed. The course adopted by the High Court is to displace one ad-hoc arrangement by another adhoc arrangement which is not at all appropriate for these persons who have gained experience which will be more beneficial and useful to the colleges concerned rather than to appoint persons afresh on ad-hoc basis....."

9. In the light of aforesaid order passed by the Apex Court in Hargurpratap Singh (Supra), it is to be examined as to whether the appointment of the petitioners was on ad-hoc basis. In this connection, learned Additional Advocate General has invited the attention of this Court to the order dated 16.11.2016 passed by single Judge of this Court at Indore Bench in W.P. No. 4567/2015, 4568/2016, 4569/2016, 4570/2016 and 4571/2016 in which the order passed by the Apex Court in case of Hargurpratap Singh (supra) was considered in detail. A small portion of that order on Page 4 may be reproduced as under:- The aforesaid judgment makes it very clear that Teachers in the aforesaid case who were working on ad-hoc basis and they were being replaced by another ad-hoc arrangement, whereas, in the present case, every year an advertisement is issued inviting applications for guest faculty lecturers and it is purely a tenure appointment for one academic year and in order to give chance to fresh post-graduate and persons who have become eligible by efflux of time by acquiring qualifications, are also given a right to participate in the process of selection. It is

not a case that the petitioners are continuing since long by virtue of their initial selection. They are appointed for academic year only and after

completion of academic year, fresh advertisement is issued inviting applications for guest faculty lecturer and, therefore, the judgment delivered in the case of Hargurpartap Singh (supra) is distinguishable on facts.

10. On consideration of submissions made by the learned counsel for the parties, it is to be examined as to whether the appointment of the petitioner was on adhoc basis ? According to the order dated 16.04.2010 issued by the State Government, Department of Higher Education, various posts of Assistant Professor, Assistant Professor Senior Grade, Assistant Professor Selection Grade and Professor were sanctioned in various colleges. If the petitioners would have been appointed by the State Government on ad-hoc basis against those posts by the State Government then it could be said that they were holding the regular post on ad-hoc basis. Looking to the appointment orders relating to the petitioners, it would be apparent that they were appointed by the concerned Jan Bhagidari Samiti for 11 months, i.e., one academic year, the concept behind that appointment is expressed in order dated 05.10.2001 passed by the State Government, Department of Higher Education, where the self financed colleges were given an opportunity to arrange for the guest faculty by the concerned Jan Bhagidari Samiti. According to that policy Jan Bhagidari Samiti was not given any delegated power to appoint any candidate to the post of Assistant Professor or Professor of any grade but Jan Bhagidari Samiti was given an opportunity to collect the fees from the students and arrange for the guest faculty in a required particular subject so that students of that subject should get required number of lectures on that particular subject. Hence, it was not an ad-hoc appointment to the post of either Assistant Professor or the guest faculty. Jan Bhagidari Samiti was not entitled to appoint anyone against the post of Assistant Professor and, therefore, it would be said that

appointment made by Jan Bhagidari Samiti was nothing but an arrangement of the guest faculty in a particular subject though no such number of posts of Assistant Professor were available vacant in the college. The government had issued a policy for arrangement of guest faculties in a particular subject at particular college by its Jan Bhagidari Samiti and, therefore, if Jan Bhagidari Samiti after observing the prescribed interview etc. appointed a particular candidate as a guest faculty for 11 months then it was a contractual appointment for 11 months as a guest faculty and in those 11 months there is no provision to appoint another guest faculty in place of previous appointed candidate. No post of guest faculty was granted to any college. It was for Jan Bhagidari Samiti to decide the number of guest faculty for a particular subject according to number of students and collection of fees for that subject. Hence, the appointments made by Jan Bhagidari Samiti were not ad-hoc appointments but those were contractual appointments. The learned single Judge has committed an error in holding that the appointment of petitioners was on ad-hoc basis. Appointments

of the petitioners had no concerned to the post of Assistant Professor or Selection Grade Assistant Professor. When advertisement was given by Jan Bhagidari Samiti for the post of guest faculty for a limited period and a contractual appointment was given then it was not an appointment on ad-hoc basis and, therefore, the law laid by the Apex Court in case of Hargurpratap Singh (Supra) is not applicable in the present case.

11. The learned counsel for the petitioners/respondents have also placed reliance upon the judgment passed by the Apex Court in case of "P. Chitharanja Menon and others Vs. A. Balakrishnan and others" [AIR 1977 SC 1720], "Amarjeet Singh and others Vs. Devi Ratan and others" [(2010) 1 SCC 417]. However, those judgments are connected with the matter of seniority or promotion and those judgments cannot be applied in

the present case.

12. The learned counsel for the petitioners have also placed reliance upon the judgments passed by the Apex Court in case of "Principal Madhav Institute of Technology and Science Vs. Rajendra Singh Yadav and others" [(2000) 6 SCC 608] and "M.C. Mehta Vs. Union of India and others" [(2007) 15 SCC 464]. However, these two judgments are dependent upon the challenge of policy advanced by the concerned Government but in the present matter, none of the petitioner has challenged the policy of the State Government for appointment of guest faculty for a limited period. Hence, such judgments cannot be applied in the present case.

13. The learned counsel for the petitioners have submitted that the petitioners have to apply again and again and thereafter they will be appointed by observing few formalities and there is no certainty of their job though they are serving as a guest faculty since last so many years. In the present case, job certainty and future of the petitioners cannot be considered because they had accepted a job of guest faculty for 11 months as proposed by the concerned Jan Bhagidari Samiti and, therefore, they knew from the very beginning that there is no job certainty in the appointment which is being given to them. As discussed by the single Judge of Indore Bench in the order dated 16.11.2016, it is clear that in every academic year, in order to give chance to fresh post graduate and persons who have become eligible by efflux of time by acquiring qualifications and also be given a right to participate in the process of selection and, therefore, the petitioners have no right to continue as guest faculty after completion of contractual period. For certainty of the job, the petitioners might challenge the policy of State Government for appointment of guest faculty.

14. Learned counsel for the petitioners have submitted that the Government has prescribed the rules framed in the year 2016

and the petitions were filed by the petitioners prior to that and, therefore, it was not possible for them to challenge the policy. However, that arguments advanced by the learned counsel for the petitioners cannot be accepted. The order which

was passed in the year 2016 provides the Rules for selection of guest faculty but it is not a policy for the guest faculty. In this connection, the order No. 1837/2977/2001/38-2 dated 05.10.2001 is referred in which system of guest faculty was introduced in self finance institution and in consequence to that order, the order No. F1-9/2012/38-1 dated 05.08.2014 may be referred in which a scheme was prescribed for selection of the guest faculty, hence, the policy of appointment of guest faculty is existing since the year 2001 and it cannot be said that the petitioners were not in a position to challenge that policy. If the petitioners would have thought for the certainty of their job then it was for them to challenge the policy of appointment of guest faculty and to get the post of Assistant Professor to be filled up by the State Government. Post of Assistant Professor is to be filled through PSC by a detailed process of selection, whereas guest faculty is a local arrangement.

15. Under these circumstances, where no ad-hoc appointment of the petitioner is found against the post of Assistant Professor and their appointment was mere contractual as the guest faculty for 11 months then they could not claim for continuation on the post against which they would be selected in the next academic year. Possibility cannot be ruled out that in a particular institution, if no student of a particular subject gets an admission in a particular academic year then Jan Bhagidari Samiti shall not be required to invite the guest faculty of that subject in that particular year and, hence, the guest faculty of that subject of the previous year cannot be permitted to continue otherwise there will be no use of that guest faculty and concerned Jan Bhagidari Samiti would be unable to pay any honorarium to the guest faculty

of that subject, where no such guest faculty was required in that subject for a particular academic year, hence, the petitioners could not be given any relief to continue indefinitely on the post of contractual appointment of 11 months.

16. Learned counsel for the petitioners have also submitted that the State Government has submitted a formal reply in the writ petition filed by the petitioners and, therefore, the State Government has no reason to file a writ appeal against the impugned order. The contention advanced by the learned counsel for the petitioners cannot be accepted. Policy is issued by the State Government and possibility cannot be ruled out that if the petitioners are given an opportunity to continue on the post of guest faculty then in future they would claim their absorption in the cadre of Assistant Professor by-passing the PSC Examination and that would be against the dictum laid by the Apex Court in case of "Secretary, State of Karnataka and others Vs. Umadevi (3) and others" [(2006) 4 SCC 1], where backdoor entry is prohibited. Learned counsel for the petitioners have also relied upon the judgment passed by the Apex Court in case of Umadevi (supra) with a view that one time regularization of such petitioners should be done by the State Government in various institution where the guest faculties were appointed. However, contention advanced by the learned counsel for the petitioners cannot be accepted because their appointment was

not against any regular post. The State Government did not delegate its power to any Jan Bhagidari Samiti for appointment of a candidate on the post of Assistant Professor. Assistant Professor can be selected through the PSC and Jan Bhagidari Samiti was neither delegated under the Recruitment Rules nor it is competent to appoint an Assistant Professor on ad-hoc basis. Till such arrangement is made, the State Government has issued a policy for appointment of guest faculty for a particular subject in a particular institution for a

particular academic session then the petitioners who were appointed as guest faculty could not claim their regularization to the post of Assistant Professor and, therefore, the law laid in the case of Umadevi (Supra) about the regularization is not applicable in the present case but prohibition of backdoor entry as laid in that case is applicable in the present case. It is made clear that no post of guest faculty is notified in a particular college and hence, there is no possibility of regularization as guest faculty. Hence, if such a perpetuity is created by the order of the single Judge relating to contractual appointment of one academic session, whereas the appointing authority was not given any power to appoint any candidate to the post of Assistant Professor and, therefore, such type of order would create an ambiguity in the policy of the State Government for consideration of the claim of the petitioners to the post of Assistant Professor, which could be a backdoor entry, hence, the State Government being an aggrieved party was competent to challenge the impugned judgment passed by the single Bench of this Court by way of an appeal. The contention of the petitioners cannot be accepted that the State Government had no reason to file an appeal.

17. In the impugned order, honorarium which was payable to the petitioners, was also revised. In this connection, after considering the contention advanced by the learned counsel for the parties, it would be apparent that there is no similarity between work of Assistant Professor and guest faculty. Assistant Professor has to do the work in a fixed hours according to his service rules, whereas the guest faculty of a particular subject is required to deliver a few lectures in a day according to availability of the students in the particular subject in various classes and, therefore, the work which was required to be done by a guest faculty has no comparison with the work of regular Assistant Professor. Hence, the guest faculty appointed for few lectures in a week for a

particular academic year cannot claim the parity of salary which is prescribed for the Assistant Professor. In this connection, guidelines issued by University Grant Commission for the year 2007-2012 may be referred. In these guidelines in Para 5.9 under head of guest faculty, honorarium of guest faculty is fixed. That relevant para is reproduced as under:- "Guest Faculty.

In view of the contents of the proposed subjects being different from what is generally available in Universities and Colleges, much off the content of new subjects will have to be taught by guest faculty experts. They could be drawn from training and professional institutions and from production related

establishments. Individuals having expertise in the discipline may also serve as guest faculty. The Guest Faculty / Internal faculty may be remunerated @ Rs.250/- per lecture of one hour duration. The Colleges/ Universities need to make the definition of a recognized teacher more flexible so as to bring expertise from the field/industry into the domain of guest faculty. If necessary, the per-requisite qualifications for the guest-faculty may be different for those who are from the field/industry and accordingly the concerned university may lower the per-requisite qualification for the guest faculty, in case the need arises."

Hence, the University Grant Commission has also fixed an honorarium of a particular amount per lecture to the guest faculty and, therefore, according to University Grant Commission, a guest faculty cannot get any emoluments in parity with regular Assistant Professor. Learned single Judge has committed an error in appreciating the work of the guest faculty.

18. On the basis of the aforesaid discussion, where the petitioners have not challenged the policy of appointment of guest faculty by the concerned Jan Bhagidari Samiti, where they were appointed according to the advertisement given by the Jan Bhagidari Samiti as a guest faculty for a limited period in a

particular academic year for a particular subject and they have accepted that assignment on the terms and conditions of the contractual appointment then they can not be permitted to continue on the post for next academic year. Their appointment was not on ad-hoc basis but it was only an arrangement of guest faculty. There is no post of guest faculty available in any institution but arrangement of guest faculty is to be done by the concerned Jan Bhagidari Samiti according to the requirement of students for a particular subject in a particular academic year. Under these circumstances, the single Bench of this Court could not have given any relief to the petitioners relating to their perpetuity to function as guest faculty till the post of Assistant Professor is filled up and for advancing few lectures in a week, they could not be treated at par with Assistant Professor. Hence, the appeals filed by the State as well as the Jan Bhagidari Samiti are accepted. Consequently, all the appeals are hereby accepted and order dated 29.09.2016 passed in W.P. No. 4716/2016, order dated 29.09.2016 passed in W.P. No. 5145/2016 and order dated 29.09.2016 passed in W.P. No. 5326/2016 are hereby set aside. All the three petitions filed by the petitioners have no substance and no relief can be granted to them. Consequently, their petitions are also dismissed.