
(2018) 10 MP CK 0005

In the Madhya Pradesh High Court

Case No : Writ Petition No. 10929, 13520, 14818, 15383, 15427, 15507, 16749, 17387, 17613, 19733, 22157, 23206, 23420 Of 2017, 1214, 1266, 02275, 09695, 12813, 14519, 16277, 16930, 17046, 17157, 17193, 17223, 17244, 17288, 17296, 17304, 17345, 17353, 17376, 17397,

Saurabh Singh Baghel & Others

APPELLANT

Vs

State Of Madhya Pradesh & Others

RESPONDENT

Date of Decision : 11-10-2018

Acts Referred:

Constitution of India, 1950 — Article 309
Madhya Pradesh School Education Service (Teaching Cadre), Service Conditions and Recruitment Rules, 2018 — Rule 2(k), 8(1)(g), 11

Citation : (2018) 10 MP CK 0005

Hon'ble Judges : Hemant Gupta, CJ; Vijay Kumar Shukla, J

Bench : Division Bench

Advocate : Brindavan Tiwari, Shiv Kumar Dubey, Satya Prakash Mishra, Wakeel Khan, Vijay Shukla, Satyendra Jyotshi, Rohtash Babu Patel, Chandrika Prasad Dwivedi, Vijay Chandra Rai, Sachindra Kumar Raghuwanshi, Gulab Kali Patel, Vishnu Chandra Dwivedi, Shankar Dayal Mishra, Mahabir Prasad Shukla, Nitya Nand Mishra, Rajesh Prasad Dubey, Ravindra Pratap Singh, Rakesh Dwivedi, Sachin Pandey, Vidya Prasad, Sushil Kumar Mishra, Shiv Kumar vastava, U.K.Tripathi, Anoop K. Saxena, Raj Kumar Tripathi, Akhilesh Kumar Shukla, Satya Prakash Mishra, Arubendra S.Parihar, Sushma Pandey, Ajay Mishra, T.P.Chaturvedi, Amilesh Chaturvedi, Prabhat K. Shukla, Akhilesh K. Jain, Neeraj Jain, Kamlesh Kumar Dwivedi, Ashok Singh, Swapnil Ganguly, O.P. Tripathi, Ajay K. Shukla with R.K.Rao, Satish Dixit, Ravi M.K.Vyas, Amit Mishra, Karan Singh Thakur, R.P.Singh, U.S. Jaiswal, Vinod K. Dubey, Shiv Kumar Raghuwanshi, Shakti Kumar oni, Manoj Mishra, R.N.Vishwakarma, Rajneesh Gupta, Ranno Rajak, A.K. Mishra, Gopal Singh Baghel, V.D.S. Chauhan, Mohan K. Shukla, Dharmendra Rajput, Amit Kumar Chaturvedi, M.K. Jaiswal, D.K. Khare, Parag Tiwari, Manoj Kumar Rajak, Rajesh Dubey, S.K.Dubey, Krishan Kumar Dwivedi, Rajesh Kumar Pandey, D.K. Katare, Anuj Mohan Gupta, Shyam Sharma, Suresh Agrawal, Ashok Jain, R.B.S. Tomar, T.C. Bansal, Rajnish Sharma, J.P. Mishra, D.S. Raghuwanshi, Sanjay K. Sharma, Amit Kumar Singh, P. Parikh, Brajesh Mishra, Ravi Choudhary, Ved Prakash Tiwari and Smita Arora, Purushaindra Kaurav, Girish Kekare, Amit Seth

Final Decision : Disposed Off

Judgement

Hemant Gupta, CJ

This order will dispose of all the aforesaid writ petitions wherein challenge is to the Circular No.F 44-13/2017/20-2 dated 07.07.2018 issued by the School Education Department, Government of Madhya Pradesh, wherein, a scheme of engaging Guest Teachers in Government Schools was circulated.

2. Along with the writ petitions, Writ Appeal No.1214/2018 (Vinita & others v. State of M.P. and others) directed against an order dated 10.08.2018 passed by the learned Single Judge of Indore Bench of this Court in W.P. No.18079/2018 and Writ Appeal No.1266/2018 (Miss Gunjan Jaiswal and others v. State of M.P. and others), which is directed against an order dated 10.08.2018 passed by the learned Single Judge of Gwalior Bench of this Court in W.P. No.17289/2018, are also being taken up. In the said two writ petitions also the challenge made by the writ-petitioners to the said circular remained unsuccessful. Whereas, CONC No.2625/2017 (Vandana Tiwari and others v. Virendra Kumar Pandey and others) has been filed alleging non-compliance of an interim order dated 01.11.2017 passed by the learned Single Bench in W.P. No.16749/2017, which writ petition has also been heard along with the present sets of cases.

3. Since common questions of fact and law are involved, all these cases were heard analogously and are being decided by this common order. However, for facility of reference, the facts are taken from Writ Petition No.18935/2018 (Saurabh Singh Baghel and others v. State of M.P. and others).

4. The grievance of the petitioners is that the petitioners are working as Guest Teachers in Government Schools but under the shifting policy circulated on 07.07.2018, such Guest Teachers are being replaced by another set of Guest Teachers. Learned counsel for the petitioners have placed reliance upon the Supreme Court judgments reported as (1985) 4 SCC 43 (Rattan Lal and others etc. etc. v. State of Haryana and others); (1992) 4 SCC 118 (State of Haryana and others v. Piara Singh and others); (2007) 13 SCC 292 (Hargurupratap Singh v. State of Punjab and others) and (2017) 1 SCC 148 (State of Punjab and others v. Jagjit Singh and others). Reference was also made to Madhya Pradesh School Education Service (Teaching Cadre), Service Conditions and Recruitment Rules, 2018 (for short "the Rules") framed under proviso to Article 309 of the Constitution of India published in M.P. Gazette (Extraordinary) on 30.07.2018, which has come into force from 01.07.2018.

5. The petitioners assert that they were appointed in the respective Government Schools as Samvida Shala Shikshak Grade-I/II or III after due selection process but, now the petitioners are not being permitted to work in the schools in which they were engaged in the previous year(s) without assigning any reason. It is further contended that there is no online process for engaging Guest Teachers in the Primary Schools, which is based upon offline system.

6. Rule 2(k) of the said Rules defines "Guest Teacher" to mean a person engaged for the purpose of teaching in Government Schools against vacant posts on temporary basis on honorarium. Rule 8(1)(g) grants age relaxation of nine years to those Guest Teachers, who have worked for minimum 200 days and minimum three educational sessions. In terms of Rule 11, 25% of vacancies are reserved for Guest Teachers who have worked in Government School for minimum three educational sessions and not less than 200 days. The relevant clauses from the said Rules read as under:-

"2. Definitions.- In these rules, unless the context otherwise requires,-

(k) "Guest Teacher" means a person engaged for the purpose of teaching in Government schools against vacant posts on a temporary basis on a honorarium;

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8. Conditions of eligibility for direct recruitment.-In order to be eligible for participating in the Teacher Eligibility Examination, a candidate must fulfill the following conditions, namely:-

(1) Age- *** **

(g) The candidates who have worked as Guest Teacher in Government schools for minimum two hundred days and minimum three educational sessions shall be entitled up to nine years relaxation in maximum age limit.

*** **

11. Procedure of Selection and Appointment through Direct Recruitment.-

(7) (a) *** **

(b) For each category of vacant posts, the reservation shall be as under:-

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(iv) 25 percent vacancies of the total available vacancies shall be so reserved for Athithi Shikshak category who have worked in Government School for minimum three educational sessions and not less than two hundred days:

Provided that if the vacancies reserved for Athithi Shikshak remain vacant they shall be filled from other eligible candidates."

7. On the other hand, learned Advocate General for the respondents-State pointed out that on 09.11.2016, a consolidated policy was evolved for engaging Guest Teachers in Primary, Middle, High School and Higher Secondary Schools by superseding the earlier policies. In January-February, 2017, the Department of

School Education sent a communication to National Informatics Centre (NIC) to prepare a module for implementation of strategy for online database of Guest Teachers, payment of their honorarium, enforcement of Rules and overall management. The NIC forwarded 15 points module providing for key features/functionaries/ benefits of the proposed system. On 30.05.2017, NIC was formally requested to prepare a module for online management of Guest Teachers, mode of their payment and for monitoring it. On 20.07.2017, it was decided that it should be made compulsory for all Guest Teachers, who are working in current session, to get themselves registered online and if they do not register, their engagement would come to an end. An affidavit to this effect was required to be filed, which was filed by all Guest Teachers. Thereafter, on 03.08.2017, a time-table was prescribed for online registration, document verification and school-wise/subject-wise allotment but such online registration process could not be completed within time fixed. The time was extended on 11.10.2017 up to 20.10.2017. In such process, 2,06,806 candidates got themselves registered and their score cards were generated. All the writ-petitioners have got online registration. Thereafter, on 04.12.2017, it was decided to implement the allotment of schools on the basis of merit and choice from the academic session 2018-19.

8. The score card is based upon three categories i.e. retired teachers, persons holding professional qualification like D.Ed., B.Ed. and candidates holding minimum basic qualification. A candidate has to give option for 20 schools wherein such candidate is desirous to work as Guest Teacher and on the basis of choice of candidates; the name is included in the panel of candidates. Such web-generated score card is a valid certificate at the State level, which verifies and determines the merit and eligibility of candidates to be invited as Guest Teachers. A person holding valid score card is not required to undergo any further scrutiny. Such process ensures that it utilizes the manpower in a more effective manner purely on the basis of merit.

9. Since the registration of over two lac candidates was successful, it was decided to start the process to post Guest Teachers on the basis of comparative merit and as per the options given in the academic session 2018-19 on the basis of marks of the score card. The candidates could submit option for schools for their engagement as Guest Teachers. As per the options given, school-wise merit list was generated online. It is pointed out that circular dated 07.07.2018 is only implementing the earlier decisions circulated on 20.07.2017 and 03.08.2017, which are not under challenge. It is pointed out that the benefit of such process is that it is not only transparent but is also that only the eligible and meritorious teachers would be engaged as Guest Teachers. Even in remote areas, if the vacancies are available, the Guest Teachers can be engaged.

10. It is also pointed out that in terms of Right of Children to Free and Compulsory Education Act, 2009 (for short "the Right to Education Act"), there has to be a Primary School within a radius of one kilometer and Middle School

within a radius of three kilometers, therefore, Guest Teachers were engaged in Primary and Middle Schools.

11. It is pointed out that there are 1,21,000 schools in the State in which 93,00,000 students are studying and that 70,000 Guest Teachers are likely to be engaged in a session out of which 51,753 Guest Teachers have already been engaged. Out of the candidates already engaged, 38,551 are the candidates who were engaged in the earlier academic sessions and have been re-engaged. It is pointed out that 75% of the Guest Teachers, who were working in earlier academic session, have been again engaged. In other words, almost 25% of the Guest Teachers have not been engaged because they are not meritorious. It is also pointed out that Guest Teachers are engaged for the following reasons:-

- (i) The sanctioned post is lying vacant;
- (ii) The Teacher is on maternity leave;
- (iii) The Teacher was on leave for 15 days or more for the reasons of medical/earned leave/any other sanctioned leave;
- (iv) If the Teacher is on paternity leave;
- (v) If the Teacher has gone on training for D.Ed./B.Ed./M.Ed. after taking permission from the Government/Department;
- (vi) In new High Schools/Higher Secondary Schools, where teachers are not available.

12. It is also pointed out that earlier Guest Teachers were engaged by initiating process of appointment at the District level and selection was made by the School Management Committee/Parents Teacher Association. Such process was having the following lacunas:

- (i) The advertisement was not proper and the vacancies were not widely circulated so that everybody could participate in the selection process;
- (ii) there was no transparency as regards the manner and method in which the selection process was conducted;
- (iii) many a times ineligible and incompetent Guest Teachers were being engaged;
- (iv) as there was no transparency in the selection process, there have been various instances wherein people who were otherwise ineligible but had some relationship/contacts with the School Management Committee/Parents Teacher Association were engaged as Guest Teacher;
- (v) there has been instances that ineligible and incompetent Guest Teachers not having the minimum qualifications were engaged for teaching;
- (vi) there was no mechanism for the State Government to check the selection process as well as to ensure whether the Guest Teachers engaged are having

proper qualifications or not and also no mechanism to check that guest teachers of the required subject are being engaged;

(vii) there was even delay in disbursement of honorarium payable to the Guest Teachers;

(viii) there was no mechanism for grievance redressal.

13. In view of the challenges in the engagement of the Guest Teachers, it was decided to have a transparent method of engaging the Guest Teachers and on merit so that the students studying in the Government Schools can have the facility of having been taught by the teachers, who are meritorious.

The benefits of the current system and circular dated 07.07.2018 were explained as mentioned hereunder:-

(i) That, for the first time the ongoing policy was modified and made transparent so that the State has the opportunity to filter out the ineligible candidates and would make the engagement purely on merits which is authenticated/verified through a transparent process which is also available in the public domain.

(ii) All the prospective candidates would be aware of the vacancies and whosoever has registered online would be engaged in a School of his choice as per option and merit, subject to the availability of vacancy including specific subject vacancy.

(iii) Even in remote areas, vacancies would be widely circulated and as per the merit of the candidate, he/she can even be engaged in remote area as per choice or availability of vacancies.

(iv) There would be no room for unqualified and/or ineligible Guest Teachers to be engaged.

(v) The Guest Teachers would be getting honorarium on the basis of Direct Benefit Transfer (DBT), therefore, their honorarium would be deposited directly in their bank accounts.

(vi) There would be no room for practice of favouritism and nepotism or the same would be minimized.

(vii) There would be full transparency in the entire selection process for engagement of Guest Teachers and the State Government would be able to monitor the vacancy position as well as the data regarding the Guest Teachers as to where they are working and what is their qualification.

(viii) Further, the guest teacher portal has also provided for a helpdesk and feedback mechanism for the candidates and guest teachers."

14. In respect of offline method adopted for engaging Guest Teachers in the Primary School, it is pointed out that there was not enough registration in the online process; therefore, it was decided to collect applications at the Block level.

After collecting all such applications, the data from all such applications have been uploaded on the website and the merit list will be determined in the same manner as in respect of Guest Teachers to be engaged for Middle, High and Higher Secondary Schools.

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.

16. The grievance of the petitioners is two folds: firstly, that 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 and secondly, 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. The reliance of the petitioners is on an order passed by the learned Single Bench in W.P. No.4716/2016 (Ramveer Singh Gurjar and others v. State of M.P. and others) decided on 29.09.2016 in respect of Guest Teachers in Government Colleges. The Court has relied upon two Supreme Court judgments in Rattan Lal (supra) and Hargurupratap Singh (supra).

17. In Rattan Lal's case (supra), the Court was examining the disengagement of teachers before the commencement of summer vacation and to appoint them on ad hoc basis at the commencement of next academic session. The Court found that this is not a sound personnel policy. It is bound to have a serious repercussion on the educational system and children studying there. Such ad hocism cannot be permitted to last any longer. In these circumstances, the Court ordered that such ad hoc teachers are entitled to salary and allowances for the period of summer vacations.

18. The judgment in Piara Singh's case (supra) has been overruled by a Constitution Bench of the Supreme Court in its decision reported as (2006) 4 SCC 1 (Secretary, State of Karnataka v. Uma Devi (3) and others) wherein the Supreme Court held that it cannot be said that the said decision has laid down the law that all ad hoc, temporary or casual employees engaged without following the regular recruitment procedure should be made permanent.

19. In Hargurupratap Singh's case (supra), the teachers engaged on ad hoc basis claimed regularization, minimum of the pay scale and to continue in their present post till regular appointments are made. The High Court ordered that the Government has to follow its policy decision taken on 23.07.2001 to allow the employees to continue them in their present post until regular incumbents are appointed. The Supreme Court ordered that the employees will continue in service till regular appointments are made in the minimum of the pay scale.

20. In Hargurupratap Singh's case (supra), there appears to be a policy dated 23.07.2001 to allow the employees to continue in service whereas in Rattan Lal's case (supra) the only direction was that disengagement of teachers after

completion of the academic session and engaging them after start of the new academic session is unjust and therefore, they be paid salary for the period of break.

21. The judgment in Jagjit Singh's case (supra) is again not applicable to the facts of the present case as the Guest Teachers are appointed on per period basis. The minimum periods to be taken by the Guest Teachers are three i.e. three hours of teaching. Therefore, such Guest Teachers cannot be compared with a teacher, who is expected to work for the whole day. Such Guest Teachers, therefore, cannot claim any parity in the matter of pay scale with the regularly appointed teachers, as the workload and period of engagement is not comparable with the teachers appointed on regular basis.

22. We do 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 03.10.2008, 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.9,000/-, Rs.7,000/-and Rs.5,000/- 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 teacher 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 not justified.

23. The argument that the Guest Teachers are being shifted from one school to another school again does not warrant any consideration. Each Guest Teacher has been given option to choose 20 schools and also to see his merit position in each school. The choice of school cannot be said to affect any right of the petitioners. The school-wise merit is prepared on the basis of score card

generated on the basis of qualifications of the candidates. The merit is based upon objective criteria excluding any subjectivity. There is no manual intervention to prepare score card which is based upon the eligibility qualification of the teachers. Therefore, if the petitioners are not meritorious to find merit in the school in which they were teaching, is not a ground to nullify the entire process of engaging almost 70,000 Guest Teachers. Therefore, we do not find any merit in the bunch of writ petitions as also in the writ appeals wherein the learned Single Benches have dismissed the writ petitions.

24. The appointments of the teachers in the schools are now based upon the statutory Rules. Such Rules have reserved 25% of the vacancies of the Guest Teachers who have worked in Government Schools for minimum three educational sessions and for not less than 200 days. Since there is reservation for Guest Teachers in the process of regular appointment, therefore, it is all the more necessary that the candidates, who are meritorious, alone are engaged as Guest Teachers so that amongst the meritorious candidates alone the candidates are appointed against the vacancies reserved for such category.

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.

26. However, engagement of such large number of Guest Teachers cannot be a rule and the State Government will be well advised to fill the posts of teachers in the schools in a phased manner in the years to come.

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.

28. With the aforesaid observations, the writ petitions and the Writ Appeal Nos.1214/2018 and 1266/2018 stand disposed of. The rule Nisi issued in CONC No.2625/2017 arising out of W.P. No.16749/2017 stands discharged and the contempt petition also stands disposed of.