

**HIGH COURT OF CHHATTISGARH, BILASPUR****WPS No. 3578 of 2023**

- Kirti Kanchan Kapil D/o Panna Lal Kapil Aged About 29 Years R/o Village And Post Jidar, Tahsil Mainpur District Gariyaband Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Principal Secretary, Tribal Welfare And Development Department, Mantralaya, Mahanadi Bhawan, Nava Raipur, District Raipur Chhattisgarh
2. Commissioner Chhattisgarh State Level Tribal Welfare, Awasiya Evam Ashram Shaishnik Sansthan Samiti, Mahanadi Bhawan Nava Raipur, District Raipur Chhattisgarh
3. Assistant Commissioner Tribal Welfare And Development Department District Gariyaband Chhattisgarh
4. Collector / President District Level Tribal Welfare, Awasiya Evam Aashram Shaishanik Sansthan Samiti, District Gariyaband Chhattisgarh
5. Principal Government Eklavya Model Residential School Mainpur District Gariyaband Chhattisgarh

---- Respondents

For the Petitioner : Shri Prabhakar Tiwari, Advocate.
For the Respondents/ State : Mr. Shubham Verma, P.L.

Hon'ble Shri Justice Parth Prateem Sahu**Order On Board****14.06.2023**

1. Counsel for petitioner submits that petitioner was engaged as Guest Teacher in Eklavya Model Residential School, Mainpur, District – Gariyaband for the academic session 2022-23. The experience certificate to this effect is also issued by Principal of the School on 18.04.2023. As the academic session came to an end, services of petitioner was not taken by Principal of Eklavya Model Residential School, Mainpur, District – Gariyaband. Petitioner was expecting that he will be again engaged as Guest Teacher in the current academic



session 2023-24 but surprisingly respondent No.4 has issued an advertisement for engagement of Guest Teacher in Eklavya Model Residential School, Mainpur, District – Gariyaband, which is arbitrary exercise of powers. He contended that as per settled law, one set of Guest Teacher can not be replaced by another set of Guest Teacher.

2. It is further contention of the petitioner that he has undergone a due process of selection for being appointed as a Guest Teachers and that the services of the petitioner also was satisfactory as there is no complaint whatsoever, so far as the competency of the petitioner is concerned, therefore, the respondents should not be permitted to go in for a fresh recruitment process for filling up of the posts of Guest Teachers under the respondent No.5 for the subject in which the petitioner was engaged.

3. Learned counsel for the petitioner relies upon the judgment of this Court passed in the case of “**Manju Gupta & others v. State of Chhattisgarh & others**” WPS No. 4406/2016, decided on 27.02.2017, whereby the similarly placed Guest Teachers under the Director (Industrial Training Institute) have been granted protection from being replaced by another set of Guest Lecturers.

4. Learned counsel for respondents-State opposes the submission of learned counsel for petitioner.

5. Having heard the contentions put forth on either side and on perusal of record, what is admitted is that the petitioner was appointed and worked as guest faculty. There was no complaint against his performance and conduct as reflecting from experience certificate.

6. In the case of “**Manju Gupta**” (supra), this Court in paragraphs No. 8



to 11 has held as under:-

'8. True it is, that the petitioners' status is that of a Guest Lecturer but that does not mean that they do not have any right. There is always a legitimate expectation of the petitioners that since the filling up of the posts has not been initiated by way of a regular appointment or by contractual appointments, the petitioners would be permitted to continue.

9. The undisputed fact is that the petitioners were given appointment only on undertaking given by them pursuant to an advertisement by the respondents. In the undertaking which was made to be furnished by the petitioners, they were made to undertake that their appointment would be till the posts are filled up by regular/contractual appointment. This by itself clearly gives an indication that unless the respondents fill up the sanctioned vacant posts by either regular recruitment or by way of contractual appointment, the petitioners would continue as Guest Lecturers. On the practical aspect also the fact that the Petitioners are discharging the duties of Guest Lecturers for last more than 1-2 years, itself is a good ground for permitting the petitioners to continue on the said posts as Guest Lecturers, simply for the reason of their experience on the said post, as fresh recruitment would mean that persons with no or less experience would be participating in the recruitment process, which also would not be in the interest of the students who are undertaking training in the respective institutions.

10. Taking into consideration the decision of the Supreme Court in the case of **Piara Singh** (supra) and which has been further reiterated in the case of Dr. Chanchal Goyal (supra), this Court has no hesitation in reaching to the conclusion that the advertisement (Annexure P-1) so issued by the respondents is definitely not in the interest of the students undertaking training at Industrial Training





Institute, Ambikapur, and the same would amount to violation of Article 21 of the Constitution of India and the same therefore deserves to be and is accordingly quashed. The advertisement would be deemed to be quashed only to the extent of the recruitment against the posts at which the petitioners are discharging. That is to say, the respondents would be entitled to fill up the posts which are lying vacant by way of Guest Lecturers where there are no Guest Lecturers available.

11. It is directed that the respondents would not be titled for filling up the posts of Guest Lecturer by replacing the petitioners unless the respondents come up with a stand that the services of the petitioners were dis-satisfactory. The quashment of the advertisement issued by the respondents would also not come in the way of the respondents for filling up of the sanctioned vacant posts by regular recruitment or by way of contractual appointment for which the respondents shall be free.”

7. This Court, under the given circumstances, is inclined to accept the same analogy in the case of the petitioner also and accordingly, it is ordered that unless there is any complaint received against the performance of the petitioner, the respondents are restrained from going in for any fresh recruitment of Guest Teachers for the said subject under the respondent No. 5/ Principal Government Eklavya Adarsh Avasiya Vidyalaya against which the petitioner was engaged.

8. It is however made clear that the protection to the petitioner would be only to the extent of not being replaced by another set of Guest Teachers. This would not preclude the State Government from going in for filling up of the post by way of regular appointment or by way of engaging contractual teachers under the rules for contractual employment.





9. With the aforesaid observations, the present writ petition stands disposed of.

Sd/-

(Parth Prateem Sahu)
Judge

Balram

