



2024:CGHC:43491-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WA No. 729 of 2024

Gayatri Sharma W/o Shri Vikas Sharma Aged About 34 Years Occupation Guest Faculty (Political Science), At Government Dr. Radhabai Naveen Girls College, Raipur, District Raipur Chhattisgarh.

... Appellant

versus

1 - State Of Chhattisgarh Through Its Secretary, Higher Education Department, Mantralaya, Mahanadi Bhawan, Atal Nagar, Raipur Chhattisgarh.

2 - Additional Director, Directorate Of Higher Education Department, Atal Nagar, Raipur Chhattisgarh.

3 - Principal Government, Dr. Radhabai Naveen Girls College, Raipur, District Raipur Chhattisgarh.

... Respondents

For Appellant : Mr.Mateen Siddiqui, Advocate

For Respondents : Mr.Y.S.Thakur, Additional Advocate General

Hon'ble Mr. Ramesh Sinha, Chief Justice

Hon'ble Mr. Bibhu Datta Guru, Judge

Judgment on Board

Per Ramesh Sinha, Chief Justice

08.11.2024

1. Heard Mr.Mateen Siddiqui, learned counsel for the appellant as well as Mr.Y.S.Thakur, learned Additional Advocate General appearing for the respondents/State.
2. The appellant/writ petitioner has prayed for the following relief(s) in this appeal:

“(1) That, the Hon'ble Court may Kindly set-aside the impugned order Dated 03.09.2024 (Annexure-A/1) passed by the Hon'ble Single Judge in WP(S) No.4034/2024 (Gayatri Sharma vs. State of C.G. & Ors.);

(II) That, this Hon'ble Court may kindly be pleased to quash the impugned advertisement dated 15.07.2024 issued by the Principal, Government Dr. Radhabai Naveen Girls College, District Raipur (C.G.).

(III) That, this Hon'ble Court may kindly be pleased to quash the clause-2 of clarification provides in letter dated 12.07.2024 issued by the Secretary, Department of Higher Education, Raipur (C.G.).

(IV) That, this Hon'ble Court may kindly be direct the respondent State to allow the appellant to perform the duties as Guest Lecturer at Government Dr. Radhabai Naveen Girls College, District Raipur till the regular appointment.

(V) That, any other relief(s) which the Hon'ble Court deems fit & proper may kindly be pleased to granted in favour of the appellant.”

3. The facts in brief, as projected by the appellant/writ petitioner is that the appellant filed a writ petition before the learned Single Judge seeking a direction to the respondents that the serving guest lecturer should not be replaced by another guest lecturer. The writ petition filed by the appellant vide WPS No.1948/2022 {**Deepa Goswami & Another v. State of Chhattisgarh & Others**} was disposed of vide order dated 24.03.2022 with a direction that unless there is any complaint received against the performance of the appellant, the respondents are restrained from going in for any fresh recruitment of a Guest Lecturer for the said subject under the respondent No.3-College against which the appellant was engaged. It was, however, made clear that the protection to the appellant would be only to the extent of not being replaced by another set of Guest Lecturers. This did not not preclude the State Government from going in for filling up

of the post by way of a regular appointment or by way of engaging contractual teachers under the rules for contractual employment. In compliance of aforesaid order, the respondent authority did not issue fresh advertisement for the academic session 2022-23 and allowed the appellant to work as guest lecturer and the appellant has worked till academic session 2023-2024.

4. On 20.06.2024, the State Government has also framed a policy namely Guest Lecturer Policy-2024 for recruitment and appointment of guest lecturers for academic session 2024-25 and the clause 13.2 of the said policy provides that the provisions of this policy will not be applicable to guest lecturers for whom stay orders have been passed by the Hon'ble High Court in the past.
5. Mr. Mateen Siddique, learned counsel for the appellant/writ petitioner submits that in earlier round of litigation, this Hon'ble Court had granted stay/protection to the appellant that she should not be replaced by another set of guest lecturer and the policy making authority has also considered the same and in policy protection has been granted to those guest lecturers who have got stay/protection order from this Hon'ble Court. Bypassing the order passed by this Hon'ble Court in earlier round of litigation and clause 13.2 of Guest Lecturer Policy-2024, the Principal, Government Dr. Radhabai Naveen Girls College, District Raipur has issued an advertisement vide dated 15.07.2024 for recruitment and appointment to the various posts of Guest Lecturers including the post of appellant *i.e.* guest lecturer Political Science subject. It is further submitted that vide letter dated 12.07.2024 sent by the Secretary, Department of Higher Education, Government of Chhattisgarh, to the Principal of all the Government Colleges of Chhattisgarh clarifying the

order passed by this Hon'ble Court, wherein it is mentioned that the Hon'ble High Court vide order dated 26.06.2024 passed in WPS No.5232/2023 {***Shrishti Lakra v. State of Chhattisgarh & Others alongwith other connected matters***} has vacated the stay order passed in earlier petitions, therefore those posts are to be considered as vacant posts and are to be filled up by advertisement as per guest lecturer policy-2024.

6. Mr. Siddique further submits that the respondent State misinterpreted the order passed by this Hon'ble Court in WPS No.5232/2023 and batch of petitions decided on 26.06.2024. In the said order, it is nowhere mentioned that the cases/petitions which has already been decided by the Hon'ble Court by granting protection to them is vacated or modified, but the respondent authorities have themselves assumed that the order passed in earlier petitions has been cancelled or set-aside or modified by order dated 26.06.2024. The order passed by this Hon'ble Court in WPS No.1948/2022 on 24.03.2022 was never challenged by the respondents in any appeal therefore that order has attained finality and by administrative order, the respondent authority cannot set-aside or modify or clarify the judicial order, therefore the impugned advertisement as well as clarification issued on 12.07.2024 (Annexure A/7) in guest lecturer policy-2024 are arbitrary, illegal and violative of the order passed by the learned Single Judge.
7. The appellant has filed the present appeal against the order dated 03.09.2024 passed by the learned Single Judge in WPS No. 4034 of 2024 and other connected matters, by which the learned Single Judge has disposed of the writ petition filed by the writ petitioner (appellant herein) observing that the State Government would be at liberty to appoint

Guest Lecturers strictly in accordance with the minimum qualification as prescribed in the UGC Regulation on minimum qualification for appointment of teachers and Other Academic Staff in University and College and Measures for Maintenance of Standard in Higher Education 2018 (*for short, the Regulation of 2018*) further making it clear that the petitioners shall not be replaced by similar set of Guest Lecturer having similar qualification as the petitioners were having.

- 8.** According to Mr. Siddique, the learned Single Judge didn't appreciate the correct facts and the law, and had ignored the vital issue, that when there is an order operating in favour of the writ petitioner/appellant that the guest lecturer can't be replaced by another guest lecturer and further the earlier order of this Hon'ble Court has attained finality as even there was no appeal or review of that order by the respondent State. Therefore if any contrary view was to be taken by the Hon'ble Single Judge, then the same was to be referred to a Larger Bench. Also the respondent State, in the garb of the new policy or in the garb of upgrading the educational qualifications cannot be permitted to by-pass the dictum of this Hon'ble Court when the educational qualifications prescribed in the policy of the year 2014 and of the year 2024 are almost one and the same.
- 9.** On the other hand, Mr. Y.S.Thakur, learned Additional Advocate General appearing for the State/respondents submits that the learned counsel for the appellant is totally unjustified in terming the order dated 24.03.2022 (Annexure A/3) to be a stay order in favour of the appellant as in the same order vide paragraph 8, the learned Single Judge has observed that the said order would not preclude the State Government from going in for filling up of the post by way of a regular appointment or by way of engaging contractual teachers under the rules for contractual employment

and that the protection to the appellant would be only to the extent of not being replaced by another set of Guest Lecturers. This order nowhere prohibits the State from going for fresh appointments. It is submitted by Mr. Thakur that the Guest Lecturers are appointed only for one academic session and after completion of that session, again fresh advertisements are issued every year. The State has now come up with a new policy of 2024 and now more qualified Guest Lecturers as per the norms of the UGC are being appointed and as such, the appellant/writ petitioner should not have any grievance, whatsoever, whereas the appellant does not fulfill the qualification as prescribed by the UGC. Reliance has been placed on a Single Bench judgment of the Orissa High Court in ***Siba Prasanna Pathy v. State of Odisha & Others*** {2022 SCC OnLine Ori 1497}.

10. We have heard learned counsel for the parties, perused the pleadings and documents appended thereto.
11. On a query being made by this Court as to whether the judgment of the learned Single Bench of the Orissa High Court in ***Siba Prasanna Pathy*** (supra), has been challenged before any higher forum or before the Apex Court, Mr. Siddique as well as Mr. Y.S.Thakur, learned Additional Advocate General submit that it has not been challenged before any higher forum.
12. The learned Single Judge, while disposing of WPS No. 4034/2024, vide order dated 03.09.2024, which is sought to be challenged herein, observed as under:

“16. Identical issue came up for consideration before Hon’ble Orissa High Court in case of Siba Prasanna Pathy (Supra) wherein it has been observed as under:-

“12. One cannot lose sight of the concept of circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is improper.

13. The following words of Lord Denning in the matter of applying precedents have become quite authoritative over the years:

“Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive. Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it”.

14. Hence, 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 replace with a competent or more competent person. This Court sees no reason why the competent person cannot be appointed in place of the incompetent person, even if both appointments are ad hoc or temporary appointees.”

17. State has already made it clear that they have precisely mentioned the minimum qualification and in the event such candidates are not available, the petitioners would not be replaced by the candidates having similar qualification. The policy of the State has the stamp of approval by this Court in the case of Shrishti

Lakra (Supra) in Para 17 quoted herein below:-

“17. In view of the above stated factual and legal position, it is quite vivid that a comprehensive policy has been framed by the State Government with regard to engagement of Guest Lecturer which cannot be said to be prejudicial to any manner to the petitioners.”

18. UGC Act, 1956 was enacted with an object to make provision for the co-ordination and determination of standards in Universities. The UGC issues regulations for ensuring quality, standard and uniformity in the education imparted by the universities. These regulations cover different aspects, such as curriculum design, teacher qualifications, necessary infrastructure, and other parameters which are necessary and essential for maintaining academic standards amongst universities. As the regulations of UGC has a binding character, the appointments on the post of teacher in the Universities and Colleges must be in consonance with the regulations of UGC. The state has formulated the policy adhering to the Regulation 2018. Appointments on the post of guest lecturer is being made with an object to select qualified and meritorious candidates.

19. As a fallout of the above discussion, this Court is thus inclined to dispose of these petitions in the following terms:-

The State Government would be at liberty to appoint the Guest Lecturers strictly in accordance with the minimum qualification as prescribed in the Regulation of 2018 and also in the Policy of 2024. However it is also made clear that the petitioners shall not be replaced by similar set of Guest Lecturer having similar qualification as the petitioners are having.

20. With these observations, these writ petitions stand disposed of.”

13. This Court, in ***Pinky Gupta & Another v. State of Chhattisgarh & Others***, {WA No. 620/2024, decided on 27.09.2024}, wherein the order

dated 26.06.2024 passed by the learned Single Judge in WPS No. 8073/2023 and connected matters were disposed of in light of the comprehensive policy 2024 dated 20.06.2024 framed by the State Government (the Higher Education Department) vis-a-vis the engagement of Guest Lecturer(s)/Part Time Lecturer(s), had affirmed the order of the learned Single Judge and it was observed that the appointment of Guest Lecturers for the academic session 2024 shall be made strictly in accordance with the policy of 2024.

- 14.** In essence, the appellant/writ petitioner, amongst other reliefs, seeks a relief that she be permitted to continue as Guest Lecturer at Government Dr. Radhabai Naveen Girls College, District Raipur.
- 15.** The appellant/writ petitioner has failed to establish that an *ad hoc* or temporary appointee cannot be replaced by another *ad hoc* or temporary appointee and if a temporary appointee in service is incompetent, can he not be allowed to be replaced with a competent or more competent person. There is no reason why the competent person cannot be appointed in place of the incompetent person, when both the appointments are *ad hoc* or temporary in nature.
- 16.** In the present case, the appellant/writ petitioner is also a Guest Lecturer which is a temporary arrangement for one academic session. If the State has come up with a new Policy of 2024 which is in conformity with the UGC guidelines and better candidates would be available for the said posts, it cannot be said to be arbitrary or unreasonable if the State decides to advertise those posts and appoint fresh Guest Lecturers having better and higher qualifications in comparison to the existing ones with lesser qualification. Even otherwise, it is a settled position of law that the Courts cannot interfere with the soundness and wisdom of a policy. A

policy is subject to judicial review on the limited grounds of compliance with the fundamental rights and other provisions of the Constitution. The Policy of 2024 would definitely be in the larger interest of the students.

- 17.** We are totally in agreement with the reasons and observations of the learned Single Judge which is just and proper warranting no interference. No relief(s) as sought for by the appellant/writ petitioner can be granted in this appeal as it is for the State to decide what would be the best in the interest of the institution and the students. Even otherwise, the learned Single Judge has made it clear that the appellant/writ petitioner shall not be replaced by similar set of Guest Lecturer having similar qualification as the appellant is having and to that extent, the rights and interest of the appellant/writ petitioner remains secure.
- 18.** As a result, this appeal stands **dismissed**.

Sd/-
(Bibhu Datta Guru)
JUDGE

Sd/-
(Ramesh Sinha)
CHIEF JUSTICE

HEAD NOTE

A subsequent policy brought in by the State Government which provides for a better and higher qualification with respect to appointment on a post which is temporary/*ad hoc* in nature, cannot be held to be arbitrary or unreasonable.