

2022 LiveLaw (SC) 406

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
L. NAGESWARA RAO; B.R. GAVAI; JJ.**

APRIL 21, 2022

CIVIL APPEAL NOS.3084-3088 OF 2022 [Arising out of Special Leave Petition (Civil) No.12946-12950 of 2017]
MANISH GUPTA & ANR. ETC. ETC. VERSUS PRESIDENT, JAN BHAGIDARI SAMITI & ORS. ETC. ETC.

Service Law - An ad hoc employee cannot be replaced by another ad hoc employee and he can be replaced only by another candidate who is regularly appointed by following a regular procedure prescribed. *[Referred to Rattan Lal and others vs. State of Haryana, (1985) 4 SCC 43; Hargurpratap Singh vs. State of Punjab and others (2007) 13 SCC 292] (Para 12)*

(Arising out of impugned final judgment and order dated 08-02-2017 in WA No. 386/2016 08-02-2017 in WA No. 387/2016 08-02-2017 in WA No. 49/2017 08-02-2017 in WA No. 52/2017 08-02-2017 in WA No. 53/ 2017 passed by the High Court of M.P. at Gwalior)

For Petitioner(s) Mr. Rana Mukherjee, Sr. Adv. Mr. Adarsh Tripathi, Adv. Mr. Ajitesh Garg, Adv. Mr. Gaurav, AOR Ms. Oindrila Sen, Adv. Mr. Vikram Singh Baid, Adv. Mr. Ajitesh Garg, Adv. Ms. Surabhi Guleria, Adv.

For Respondent(s) Mr. Bharat Singh, Adv. Mr. Amit Pawan, AOR Mr. Ashish Pandey, Adv. Mr. Kshitiz Singh, Adv. Mrinal Gopal Elker, AOR MR. Ankit Mishra Adv.

ORDER

B.R. GAVAI, J.

1. Leave granted.
2. The present appeals challenge the common judgment and order dated 8th February, 2017, passed by the Division Bench of the High Court of Madhya Pradesh, Gwalior Bench, in Writ Appeal No. 386 of 2016 along with companion matters, thereby allowing the appeals filed by the State of Madhya Pradesh as well as the Jan Bhagidari Samiti and setting aside the common judgment and order dated 29th September, 2016 passed by the learned single judge of the High Court of Madhya Pradesh, Gwalior Bench in Writ Petition (Civil) Nos. 4716 of 2016, 5326 of 2016 and 5145 of 2016.
3. The facts in the present case are taken from Writ Petition (Civil) No.4716 of 2016.
4. The State Government of Madhya Pradesh, vide Notification dated 30th September, 1996, started a Scheme known as “Jan Bhagidari Scheme” (hereinafter referred to as “the said Scheme”). As per the said Scheme, the Government had decided that the local management of the Government Colleges was to be handed over to a Committee so as to ensure public participation in the Government Colleges. Under the said Scheme, the said Committees were to be constituted having members from various fields. The Chairman of the said Committee was to be appointed by the State Government from the members of the concerned Civic Body, District Panchayat, Member of Legislative Assembly (MLA) or Member of Parliament (MP). The District Collectors or their representative were to be the ex-officio Deputy Chairman of the General Council of

the said Committee. The representatives of the donors, farmers, and the representative of benefitting schools were to be the members of the said Committee. The said Committee was known as Jan Bhagidari Samiti.

5. Vide the Government Circular/Order dated 5th October, 2001, the State Government decided to start some courses on a self-financing basis. For the said courses, the appointments were to be made on contractual/tenure basis and the honorarium of the teachers and other staff was to be decided by the said Committee.

6. In pursuance to the said Scheme, an advertisement came to be issued in the year 2014 for appointment of teachers as guest faculty for the Academic Year 2014-2015 in different Colleges. The writ petitioners in Writ Petition (Civil) No.4716 of 2016, having requisite qualifications, applied to the advertised positions in pursuance to the said advertisement. Upon their selection by the duly constituted Committee, they were appointed. After the end of the Academic year, the writ petitioners were discontinued from service. Fresh advertisements were issued for the next Academic Year 2015-2016. Being aggrieved thereby, the writ petitioners approached the High Court by way of Writ Petition (Civil) No. 4716 of 2016. The said writ petition was allowed by the learned single judge of the High Court vide judgment and order dated 29th September, 2016, thereby directing that the writ petitioners therein would continue to work on their respective posts till regular selections were made. It was also directed that the writ petitioners therein were entitled to get the salary in accordance with the UGC circular issued in February, 2010.

7. Being aggrieved thereby, the State Government as well as the Presidents of the Jan Bhagidari Samitis preferred appeals before the Division Bench of the High Court. The Division Bench of the High Court by the impugned judgment and order dated 8th February, 2017, allowed the writ appeals and set aside the judgment and order passed by the learned single judge of the High Court. Being aggrieved thereby, the present appeals by way of special leave.

8. We have heard the Shri Rana Mukherjee, learned Senior Counsel appearing on behalf of the appellants and Shri K.M. Nataraj, learned Additional Solicitor General ("ASG" for short) appearing on behalf of the respondents.

9. Shri Rana Mukherjee, learned Senior Counsel, would submit that the Division Bench of the High Court has erred in interfering with the judgment and order passed by the learned single judge. He submits that, as a matter of fact, the appellants were duly qualified and were selected in accordance with due selection process and were required to undergo the selection process in every Academic Year. He submits that the *modus operandi* of the Government Colleges was to engage the services of the appellants at the beginning of the Academic Session and to discontinue them at the end of the Academic Session; and again to issue fresh advertisements for the next Academic Session. In response to the same, the candidates were again required to follow the selection process to get appointed. It is therefore submitted that though there was sufficient workload for regular posts, the appellants were deprived of regular employment. It is submitted that, in any case, the appellants had not sought for regularization. The relief claimed was only for continuation of their services till duly

selected candidates were appointed. He therefore submits that the impugned judgment and order delivered by the Division Bench of the High Court deserves to be set aside.

10. Shri K.M. Nataraj, learned ASG, on the contrary, would submit that the appellants were appointed in accordance with the said Scheme. It is submitted that under the said Scheme, the Government Colleges were required to run various courses on a self-financing basis. The expenditure for the same was to be meted out from the tuition fees, received from the students. He submits that the appointments of appellants were neither *ad hoc* nor temporary. It is submitted that their services were as guest lecturers and were on contractual basis for 11 months.

11. Shri Nataraj further submits that the requirement of the guest lecturers was from year to year on the basis of the number of students available for particular course(s). He further submits that the said Scheme itself provided for appointment of lecturers on a guest faculty basis and as such, since the appellants had chosen not to challenge the said Scheme, the Division Bench had rightly allowed the writ appeals and dismissed the writ petitions.

12. A perusal of the advertisement dated 24th June, 2016 issued by the Principal, Government Kamla Raja Girls Post Graduate Autonomous College, Gwalior, which is at Annexure P-2 of the Appeal Paper Book and the advertisement dated 2nd July, 2016 issued by the Principal, SMS Government Model Science College, Gwalior, M.P., which is at Annexure P-3 of the Appeal Paper Book, would show that the appointments were to be made after the candidates had gone through due selection procedure. Though Shri Nataraj, learned ASG has strenuously urged that the appointments of the appellants were as guest lecturers and not as *ad hoc* employees, from the nature of the advertisements, it could clearly be seen that the appellants were appointed on *ad hoc* basis. It is a settled principle of law that an *ad hoc* employee cannot be replaced by another *ad hoc* employee and he can be replaced only by another candidate who is regularly appointed by following a regular procedure prescribed. Reliance in this respect can be placed on the judgment of this Court in the case of **Rattan Lal and others vs. State of Haryana and others**¹ and on the order of this Court in the case of **Hargurpratap Singh vs. State of Punjab and others**².

13. In that view of the matter, we do not find that an error was committed by the learned single judge of the High Court by directing the writ petitioners to continue to work on their respective posts till regular selections are made. We, however, find that the direction issued by the learned single judge of the High Court that the writ petitioners would be entitled to get the salary in accordance with the UGC circular is not sustainable. The advertisements themselves clearly provided that the selected candidates would be paid the honorarium to be determined by the said Committee.

14. We are informed at the Bar that the appellants are being paid on a per hour basis, i.e., at the rate of Rs.1,000/- per hour and they are continuing to work in pursuance of

¹ (1985) 4 SCC 43

² (2007) 13 SCC 292

the order of status quo passed by this Court on 28th April, 2017. We also find substance with the submission made on behalf of the respondent – State that continuation of the appellants would depend on the number of students offering themselves for the concerned courses.

15. In that view of the matter, we are inclined to partly allow the present appeals.

16. Accordingly, we pass the following order:

A. The appeals are partly allowed.

B. The impugned judgment and order dated 8th February, 2017 passed by the Division Bench of the High Court of Madhya Pradesh, Gwalior Bench in Writ Appeal No.386 of 2016 along with companion matters is quashed and set aside;

C. The judgment and order dated 29th September, 2016 passed by learned single judge of the High Court is modified as under:

(i) The writ petitioners - appellants herein would be entitled to continue on their respective posts till they are replaced by regularly selected candidates;

(ii) The writ petitioners - appellants herein would be continued on their respective posts provided that a sufficient number of students are available for the particular course(s) for which the writ petitioners – appellants herein are appointed.

(iii) The writ petitioners – appellants herein would be entitled to honorarium at the rate of Rs.1,000/per hour as is being paid to them presently.

17. Pending application(s), if any, shall stand disposed of. There shall be no order as to costs.