

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

**Civil Writ Petition No. 13045 of 2009
Date of Decision: 6.4.2010**

Ashok Kumar

..Petitioner

versus

The State of Haryana and others

..Respondents

**CORAM: HON'BLE MR. JUSTICE MUKUL MUDGAL, CHIEF JUSTICE
HON'BLE MR. JUSTICE JASBIR SINGH**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Ashok Bhardwaj, Advocate for the petitioners in
CWP Nos.16234 and 19464 of 2009
Mr.N.R.Dahia and Mr.S.N.Pillania, Advocates
for the petitioners in CWP No.1722 of 2009
Mr.Jagbir Malik, Advocate for the petitioner in
CWP No.2650 of 2009
Mr.R.K.Malik, Senior Advocate with
Mr.Jagbir Malik, Advocate for the petitioners in
CWP No.4562, 4690 and 13045 of 2009
Mr.Rajiv Atma Ram, Senior Advocate with
Mr.Vikas Kuthiala, Advocate for respondent No.3
Mr.G.K.Chatrath, Senior Advocate with
Ms.Shapali Sodhi, Advocate
Mr.Praveen Gupta, Advocate for the petitioners in
CWP Nos. 5029 and 5041 of 2009
Mr.Rajesh Bansal, Advocate for the petitioner in
CWP No.16143 of 2009
Mr.Hawa Singh Hooda, Advocate General Haryana with
Mr.Anil Rathee, Additional Advocate General, Haryana and
Mr.Gagan Wasu, Assistant Advocate General, Haryana

Jasbir Singh, J.

1. This judgment will dispose of Civil Writ Petitions bearing Nos. 1722, 4562, 4690, 5029, 5041, 13045, 16143, 16234 and 19464 all of year 2009 and 2650 of 2010.
2. In some of these writ petitions, there is a common challenge, to the instructions dated 2.3.2009, vide which terms and conditions for engagement of guest faculty teachers/ lecturers were changed.
3. In another set of writ petitions, besides laying challenge to the aforesaid instructions, challenge has also been laid to a corrigendum/ notice dated 3.7.2009, by which, relaxation in age, exemption from passing the School Teachers Eligibility Test (STET) and weightage towards experience, for service rendered as guest faculty teachers, at the time of regular selection has been provided.
4. Dispute in all these writ petitions is regarding selection to the post of the Lecturers (School Cadre) HES-II (Group C) in the State of Haryana (in short, the cadre). Posts falling in the above said cadre are governed by the provisions of The Haryana School Education Lecturer School Cadre (Group C) Service Rules, 1998 (in short, the 1998 Rules).
5. For facility of reference, facts are being mentioned from CWP No.13045 of 1999.
6. By filing this writ petition, the petitioner has laid challenge to the Policy circular dated 2.3.2009 (Annexure P7) and to corrigendum dated 3.7.2009 (Annexure P9) these being arbitrary and contrary to the guarantee of equality under Articles 14 and 16 of the Constitution of India.
7. Before dealing with the controversy in question, it is necessary to mention here that more than 1300 posts of Lecturers in the cadre were

lying vacant in the State of Haryana. With a view that education of the School children may not suffer, the State of Haryana formulated a Policy guideline to engage teachers/ lecturers, as guest faculty, to overcome shortfall of the teachers in various Schools in the State of Haryana. Guidelines issued in that regard in the year 2005 for the Session 2005-2006 are extracted here as under:-

CRITERIA:

1. *The Principal/ Headmaster/ DDO of the concerned school are authorized to assess the shortfall of teachers keeping in view the sanctioned posts of teachers and the enrolment of students.*
2. *The minimum prescribed periods for Lecturers/ Master/ C&V teachers are 30, 38 and 39 respectively for one week, if in any school the post of any subject is vacant the demand of periods exceeds full workload as per the above norms then a guest faculty arrangement be made.*
3. *That such offers will firstly be made to retired teachers who had received National/ State awards or who enjoyed an excellent reputation for knowledge in the subject. If such good retired teachers are not available, then the Head of the Institution will engage other teachers or guest faculty having prescribed qualifications as applicable to regular teachers. For this the powers are delegated to the level of Principal/ Headmaster/ DDO.*
4. *The applicant should fulfill all the qualifications prescribed for the post as laid down in the service rules for direct recruitment. This offer will be made only to those who possess superior qualifications to the minimum prescribed qualifications.*

Procedure

- I. *The head of institution would engage teachers on guest faculty on the basis of vacancies and the workload.*
- II. *The Principal/ Headmaster/ DDO after assessing the requirement will display the requirement on a board displayed at the main gate of institution. In case of schools having post of Principal or Headmaster vacant, the DDO/ BEO would assess the requirement and will display the same on the Board. BEO will also assess the requirement of elementary school teachers.*
- III. *The applications should be submitted by the applicants offering their services for engaging the guest faculty for the specific period, from the date of engagement till 31.3.2006 only.*

IV. The Principal/ Headmaster/ DDO will process all the applications received. If the Principal/ Headmaster/ DDO receives applications more than the vacancies for that academic session, then he/ she shall give preference to the applicants having higher academic merit. While making appointment in the guest faculty, the preference will be given to the candidate of that very village/ area. The merit list of such candidates would be prepared. If the candidate of that concerned areas is not available then the merit list of candidates of that Division will be prepared. IInd preference will be given to the candidates of that Division. IIIrd preference will be given to the candidate of that District.

V. As and when a regular appointee is posted to that school (whether, after regular direct recruitment or after promotion or after adjustment or after transfer), the Head of the Institution will dispense with the services of the person engaged on guest faculty of that category of post. It is not an appointment but job work offer on period basis on prescribed rates. This is with a view to take care of studies of students where regular teachers are not available in the school.”

8. The policy also refers to the remuneration to be paid to the guest faculty (teachers/ lecturers). It was decided that the guest faculty should be engaged on the basis of merit. It was also mandated that terms and conditions, including mode of payment should be displayed on the main gate of the institution, where appointment is to be made.

9. For the Session 2006-2007, those very guidelines were reiterated. Thereafter, vide instructions dated 2.3.2009 (Annexure P7), terms and conditions of the guest faculty were changed as under:-

“(i) The Guest Teachers will now be engaged for a period of one year on contract basis instead of their engagement on per day per period basis. Such Guest Teachers who will be kept on contract basis shall not ordinarily be removed during their period of contract. Their services, however, can be terminated before the expiry of the contract period, on the availability of a regular person by way of transfer, promotion or direct recruitment.

(ii) In the event of a Guest Teacher being removed on the availability of regular teacher in the above stated manner, such Guest Teacher shall be adjusted at another place in accordance with adjustment policy already issued by the Department.”

10. It was further decided to pay a consolidated salary of Rs.13500/- per month to the Lecturers, Rs.11000/- per month to the Masters, Language Teachers and Rs.10000/- to JBT and Drawing Teachers. They were also held entitled to gazetted holidays and 12 casual leaves @ one per calendar month. It was further envisaged that if work and conduct of an appointee is not satisfactory, service of a guest faculty Teacher can be terminated without assigning any reason.

11. In the meantime, an advertisement appeared in the newspaper Dainik Jagran on 18.6.2009, advertising 1317 temporary posts of Lecturers (School Cadre) HES-II (Group B) (in short, the cadre). Last date to submit applications was fixed as 17.7.2009. Thereafter on 3.7.2009 (Annexure P9), a corrigendum was issued in partial modification of the advertisement mentioned above and the following provision was made regarding benefits to be extended to the members of guest faculty in the cadre:-

“Besides as per the decision of the State Govt., the guest teachers applying for these posts will be given exemption from passing the School Teachers Eligibility Test (STET) and age relaxation in the upper age limit in additional weightage for having served the department as guest teacher will be given as under:-

“No weightage will be given to a person who has served for less than six months. For the six months experience, 6% additional marks will be given and one percent additional will be given for every additional month of engagement subject to maximum 24 marks.”

(emphasis supplied)

Necessary stipulation:- In case the Hon'ble Punjab and Haryana High Court does not agree to the grant of relaxation to the guest teachers, the same will not be given to them at the time of final selection.”

Hence, this writ petition.

12. It is contention of counsel for the petitioner that by passing the impugned instructions (Annexure P-7), vacant posts have virtually been confined only for the erstwhile guest faculty teachers and further by

providing relaxation in age, qualification and by giving weightage towards experience to the guest faculty teachers, a grave injustice has been done to the petitioner and that the orders passed are contrary to the provisions of Articles 14 and 16 of the Constitution of India. It has been prayed that the impugned instructions / corrigendum be quashed.

13. Upon notice, reply has been filed by the State of Haryana, wherein Policy to appoint the guest faculty Teachers has been supported. It has further been stated that in the interest of studies of the children, in the government schools, by way of stop-gap arrangement, guest faculty teachers were appointed. Issuance of Policy in that regard has been admitted. It was further stated that the department imposed a complete ban on fresh engagement of guest teachers vide letter dated 17.11.2007 and it was ordered that in case of any post falling vacant, only disengaged guest teachers should be re-engaged. It was further stated that a large number of guest teachers represented to the authorities concerned to regularize their services, however, taking note of ratio of judgment of the Hon'ble Supreme Court in Secretary, State of Karnataka and others v. Uma Devi (3) and others, (2006) 4 SCC 1, their request was not accepted. For giving relaxation in age, qualification and weightage towards experience, to the guest faculty teachers, it was mentioned that the same was given on account of their experience and opting to enter government service against a very meager salary when the offer was first made. Prayer has been made to dismiss the writ petitions being without any merit.

14. Before dealing with the controversy raised by both the parties, it is necessary to note down some relevant provisions of the Rules governing the service conditions in the cadre.

15. As per Rule 5 of the 1998 Rules, no person shall be appointed to any post in the cadre by direct recruitment if he is less than 17 years or more than 35 years of age on or before the first date of month preceding the last date of submission of application to the Staff Selection Commission. Rule 7 deals with qualification to be possessed by a candidate to enter service in the cadre, which reads thus:-

“Qualifications.- No person shall be appointed to any post in the service, unless he is in possession of qualifications and experience specified in column-3 of Appendix B to these rules in the case of direct recruitment and those specified in column 4 of the aforesaid Appendix in the case of persons appointed other than by direct recruitment.

Provided that in the case of appointment by direct recruitment, the qualifications regarding experience shall be relaxable to the extent of 50% at the discretion of commission in case sufficient number of candidates belonging to Scheduled Castes, Backward Classes, Ex-servicemen and physically handicapped categories possessing the requisite experience are not available to fill up the vacancies reserved for them, after recording reasons for so doing in writing.”

Taking note of the provisions of the Appendix B annexed with the 1998 Rules, in advertisement (Annexure P8) dated 18.6.2009, the following qualification was laid down as a requirement for the candidates to enter service in the cadre:-

“Essential Qualification:-

1. *Essential Qualifications for the Lecturers of all subjects except Lecturer in Chemistry, History, Maths and Pol. Science:-*
 - (i) *Post Graduate Degree in relevant subject from a recognized university alongwith atleast 50% marks.*
 - (ii) *Certificate of having qualified School’s Eligibility Test (STET)*
 - (iii) *Matric with Hindi/ Sanskrit.”*

Regarding relaxation in age granted to the guest faculty teachers, following stipulation was added:-

“Note:-

(i) xx xxx xxx

(ii) *Relaxation in upper age in the case of Guest Teachers working in Haryana will be given to the extent to the service rendered as Guest teacher.*

(iii) to (viii) xxx xxx xxx”

16. Thereafter, a corrigendum (Annexure P9) was issued on 3.7.2009, giving exemption to the guest teachers from passing STET and additional weightage for having served the department as guest faculty teachers upto 24 marks, as mentioned in aforesaid corrigendum.

17. As per contention raised by counsel for the petitioner, his primary grievance is that by confining the vacant posts only for the disengaged guest faculty teachers and by giving relaxation in age, exemption from passing STET and weightage towards experience gained as guest faculty teachers, the respondent State has committed violation of Articles 14 and 16 of the Constitution of India.

18. In so far as challenge to the instructions dated 2.3.2009 (Annexure P7) is concerned, by which, vacant posts were ordered to be filled up by appointing disengaged guest faculty teachers, the same has virtually become superfluous in the face of an advertisement issued thereafter on 18.6.2009 to recruit 1317 Lecturers against temporary posts in the cadre. In view of the changed circumstances, even counsel for the petitioner has failed to raise any plausible argument to lay challenge to the instructions, mentioned above.

19. The primary grievance of the petitioner is that benefits now given to the guest faculty teachers towards age, exemption from passing STET and weightage towards experience, if upheld, would amount to negation of his right to fairly compete for the posts, in question. By giving benefit to those, who enter the cadre through backdoor, as a stop-gap

arrangement, an attempt has been made, virtually to regularize them, contrary to the directions issued by the Hon'ble Supreme Court in Uma Devi's case (*supra*). It is contention of counsel for the petitioner that the State of Haryana had started appointing guest faculty teachers for the Session 2005-2006 and by now, an overwhelming majority of them have completed more than two years of service as guest faculty teachers. As per the corrigendum issued, they would be entitled to get weightage of 24 marks towards their experience, and if that benefit is maintained, the petitioner will not be in a position to compete in any manner though he may be more meritorious as compared to many of them, so far as academic qualifications are concerned. No such weightage has been given for experience gained by the candidates other than the guest faculty members, which they may have acquired by serving in private institutions. It has further been argued that by making an amendment in the 1998 Rules on 24.7.2008, passing of STET was made compulsory and many petitioners have passed the same. By giving exemption from passing the above test to the guest faculty members, the State of Haryana has caused a grave injustice to the petitioners, who are eligible, as per the Rules and are meritorious. By submitting that the said action is discriminatory, a prayer has been made to set aside the same.

20. So far as relaxation in age is concerned, at the time of arguments, no serious dispute was raised regarding the same, by any counsel for the petitioners.

21. To rebut the above said objections raised by counsel for the petitioners, Mr.Hawa Singh Hooda, Advocate General, Haryana has vehemently argued that weightage upto 24 marks, in favour of the guest faculty teachers, for experience gained by them by working as such, is perfectly justified. He tried to support his contention by stating that initially

when the scheme was floated in the year 2005, very meager amount was offered to the guest faculty teachers / lecturers, for the work to be performed by them. By accepting that offer, they had virtually sacrificed and worked for welfare of the education system in the State, for which, they need to be rewarded, in view of which the impugned weightage was given to them. He further stated that exemption from passing STET was granted because when working as guest faculty teachers, the concerned guest faculty members would gain sufficient experience. He also brought to our notice that relaxation in qualification etc. was granted in terms of powers vested in the Government under Rule 17 of the 1998 Rules. He further argued that engagement of the guest faculty teachers was made after wide publicity in the newspapers and if the petitioners were interested, they would have also opted for the same, however, they failed to do so. At this stage, they cannot raise any objection regarding engagement of the guest faculty teachers. He further tried to impress upon the Court that the category of guest faculty teachers is a class separate and deserves special weightage, which has rightly been given to them. He prayed that the writ petition, having no substance, be dismissed.

22. Before proceeding further, it is necessary for us to note as to whether when guest faculty teachers were engaged, an opportunity to compete was given to all or not and whether, it was restricted to few only, as per the Policy formulated in the year 2005?

23. To select guest faculty teachers, on getting report regarding deficiency of teachers in a particular school from a Principal/ Headmaster, the process to select guest faculty teachers was entrusted to the Principal/ Headmaster of the concerned school. In the first instance, the post was to be offered to a retired teacher who had received National/ State award or who

enjoyed an excellent reputation for knowledge in the subject. In case of non availability of a retired teacher, it was left open to the Head of the Institution to engage guest faculty teachers, having prescribed qualifications as applicable to the regular teachers. As per the prescribed procedure, after assessing the requirement, the Principal/ Headmaster was to display the requirement on a Board displayed at the main gate of the institution, inviting applications. The posts were to be filled up for a specified period as per requirement or till the arrival of a regular teacher. The Principal/ Headmaster was to process the applications. First priority to engage guest faculty in a particular school was to be given only to the candidates of that village/ town. If no candidate was available, as per qualification, then the post was to be filled up out of the applicants from that particular block and thereafter from that district. It was further provided that on joining of a regular appointee, service of the guest faculty teachers was to be dispensed with. It is not in dispute that initially all the guest faculty teachers were appointed for six months.

24. A reading of the provisions of 2005 Policy, makes it very clear that offer to enter as a guest faculty teacher was not open to. It was restricted to the candidates from a village, then from a block and thereafter from a district. There could have been a situation that in 'A' village, person having lower merit may have been selected whereas a candidate from the adjoining 'B' village, having much higher merit may have been ignored. Inter-se merit of all the candidates, in the State, was not compared at all at any time.

25. There may be cases where a meritorious person, working in some private institution, might have ignored the offer to enter the cadre, as guest faculty teacher, on account of the meagre salary offered by the State.

The contention of Mr.Hooda that it was an open advertisement and the petitioner could have also opted by applying for the post as a guest faculty teacher, is devoid of any reasoning. Many suitable candidates may have been left out in view of the procedure adopted, to appoint guest faculty teachers, as per the 2005 Policy. Guest faculty teachers were appointed firstly in the year 2005-2006. An advertisement for regular appointment was issued in the year 2009. In the meantime, it can reasonably be presumed that many more eligible candidates may have become available, who might be more meritorious compared to those who were working as guest faculty teachers.

26. Further contention of Mr.Hooda is that by opting to enter as guest faculty teachers, the candidates have sacrificed to render service for upliftment of education system in the State, is also devoid of any reasoning. It is apparent from the records that after joining service as guest faculty teachers, most of them, even before the end of their first term, as guest faculty teachers, started agitating their grievances before the legal forums. They also started claiming higher pay scales and engaged the State in unnecessary litigation. Nature of service of the guest faculty teachers was contractual. After accepting the same, they were not supposed to turn back and say that perks were less or they be allowed to continue in service.

27. A large number of guest faculty teachers filed CWP No.2743 of 2006, claiming continuation in service and higher wages. A Division Bench of this Court held that they be allowed to continue in service till regular incumbents are appointed. It was further held that they were not appointed through regular procedure and as such they cannot claim continuation in service. Regarding payment of higher wages, it was observed as under:-

“The petitioners are also aggrieved, because they are not being paid emoluments equal to the minimum wages being paid to the regular teaching faculty. It is not possible for us to accept the instant prayer of the petitioners, as they have certainly no right to make the aforesaid claim, inasmuch as, their engagement is, by and large, without following any process of selection. Furthermore, it would also not be possible to proceed against the guest faculty departmentally in case of a misconduct in view of the nature of their engagement. The Supreme Court in State of Haryana vs. Jasmer Singh 1997 (1) SLR 143, declined a similar claim for minimum wages raised at the hands of the daily wagers. The aforesaid judgment was subsequently reaffirmed by the Apex Court in State of Orissa and others vs. Balram Sahu and others, 2002 (6) SLR 542, wherein again it was held, that daily wagers are not entitled to minimum pay of a regular employee. Since the petitioners have been engaged to discharge duties only for limited periods in the day, and in some cases, for limited number of days, we are of the view that their claim for wages at the minimum of the pay scale fixed for regular employees, is misconceived.” (emphasis supplied)

28. In the year 2007, again many writ petitions were filed, claiming continuation in service and higher wages. All those writ petitions were disposed of by a Division Bench of this Court, by passing an order on 30.8.2007, in CWP No.387 of 2007, titled as Baldev Singh and others v. State of Haryana and others, regarding claim of continuation in service of the guest faculty teachers and their entitlement to get higher wages, it was observed as under:-

“A perusal of the Policy shows that appointment of Guest Faculty Teachers was a job work on period basis at prescribed rates and hence, no Guest Faculty Teacher is entitled to remain on the post beyond the period for which he has been engaged. The petitioners were engaged as Guest Faculty Teacher by the Principal of the college concerned, who otherwise, is not the competent authority to make appointment under the Rules.

Apart from the above, the petitioners were engaged from certain pocket area only i.e., from their village or from the block and they never competed with the best of talent available. The reservation policy was also not followed. Essentially the petitioners were engaged on contract basis and there was no obligation on either side to continue that contract beyond the period for which the Guest Faculty Teachers/Lecturers were appointed.

It is, thus, clear that the claim of the petitioners for quashing the condition of limiting the period of their appointment does not suffer from any illegality or irregularity which may warrant interference of this Court. In the Constitutional Bench judgement in Secretary, State of Karnataka & others vs. Umadevi & others, (2006) 4 SCC 1, the Hon'ble Supreme Court has allowed the State to engage employees on contract basis by taking into account the requirement of work. The petitioners can neither impose themselves upon the respondents nor they can be allowed to continue beyond the period for which they were engaged as Guest Faculty Teachers. The petitioners also cannot be allowed to continue till regular appointments are made, as Guest Faculty Teachers are appointed only to tide over the situations like death, retirement, resignation, promotion, etc.”
(emphasis supplied)

29. It is also on record that in the year 2007 again, the guest faculty teachers filed several writ petitions, which were disposed of by a Division Bench of this Court on a concession made by the State of Haryana in CWP No.5289 of 2007 on 24.1.2008, wherein it was agreed that guest faculty teachers shall not be entitled to continue in service when regularly selected candidates were appointed. It was further decided that if department decides to close down any trade in any institute, incumbent of those posts shall have no right to continue in service. However, in case, that very trade is opened in any other institute and if disengaged teachers are available, they will be given an offer to join the same in the first instance. It was further agreed that in case the department of Vocational Education is merged in the department of Secondary Education, the guest faculty teachers will continue to work on the same terms and conditions under which they were working at the time when writ petitions were filed and will leave the post on joining of regularly selected candidates.

30. The contention of Mr.Hooda that the guest faculty teachers have made a sacrifice for brining in development in the educational system in the State of Haryana, even can not be sustained when we look into the

amendment now made vide instructions Annexure P-7. In those instructions, salary to be paid to the guest faculty teachers has been increased to a large extent.

31. A reading of orders passed by this Court, as referred to above, makes it very clear that entry of guest faculty teachers was de-hors the regular selection process. It was limited to few candidates. All eligible candidates were not allowed to compete for those posts. The nature of service was contractual. However, despite knowing terms and conditions of their appointment, the guest faculty teachers dragged the State of Haryana into avoidable litigation and on account of their action, even the process of selection of regular teachers was delayed. If at this stage, relaxation in age, exemption from passing STET and weightage upto 24 marks towards experience gained as guest faculty teachers is given to them, it would amount to appointing those very candidates in regular service, who, in the first instance, entered it through a selection process which was not regular and open to all. Obviously, it would mean a grave discrimination to the other more deserving candidates. Most of the guest faculty teachers have service of more than two years to their credit, they are sure to get 24 marks at the time of selection and by that process they are bound to exclude others who are more meritorious from entering in service. The grant of 24 marks in the marks obtained by all the candidates, including the guest faculty teachers, as per criteria, in a fiercely competitive field with thousands of applicants would virtually rule out non guest faculty candidates. This virtually amounts to regularization of guest faculty teachers in service, which was deprecated and proscribed by the Hon'ble Supreme Court in Uma Devi's case (supra), wherein it was held that persons, who got employment without following a regular procedure and at times enter

through backdoor are not entitled to get permanence in service. It was further observed that it is not open to those who accept contractual engagement to say that they were not aware of the nature of the employment. It was also mandated that the States should not be allowed to depart from the normal rule and indulge in temporary employment in permanent posts. In that regard, it was held as under:-

“4. But, sometimes this process is not adhered to and the Constitutional scheme of public employment is by-passed. The Union, the States, their departments and instrumentalities have resorted to irregular appointments, especially in the lower rungs of the service, without reference to the duty to ensure a proper appointment procedure through the Public Service Commission or otherwise as per the rules adopted and to permit these irregular appointees or those appointed on contract or on daily wages, to continue year after year, thus, keeping out those who are qualified to apply for the post concerned and depriving them of an opportunity to compete for the post. It has also led to persons who get employed, without the following of a regular procedure or even through the backdoor or on daily wages, approaching Courts, seeking directions to make them permanent in their posts and to prevent regular recruitment to the posts concerned. The courts have not always kept the legal aspects in mind and have occasionally even stayed the regular process of employment being set in motion and in some cases, even directed that these illegal, irregular or improper entrants be absorbed into service. A class of employment which can only be called 'litigious employment', has risen like a phoenix seriously impairing the constitutional scheme. Such orders are passed apparently in exercise of the wide powers under Article 226 of the Constitution. Whether the wide powers under Article 226 of the Constitution are intended to be used for a purpose certain to defeat the concept of social justice and equal opportunity for all, subject to affirmative action in the matter of public employment as recognized by our Constitution, has to be seriously pondered over. It is time, that Courts desist from issuing orders preventing regular selection or recruitment at the instance of such persons and from issuing directions for continuance of those who have not secured regular appointments as per procedure established. The passing of orders for continuance, tends to defeat the very Constitutional scheme of public employment. It has to be emphasized that this is not the role envisaged for High Courts in the scheme of things and their wide powers under Article 226 of the Constitution are not intended to be used for the purpose of perpetuating illegalities, irregularities or improprieties or for scuttling the whole scheme of public employment. Its role as

the sentinel and as the guardian of equal rights protection should not be forgotten”

32. The Hon'ble Supreme Court accepted the right of the State to give employment in posts on temporary or daily wage basis. At the same time, it was observed that such engagement should not be allowed to defeat regular process of selection. By discussing plethora of judgments and touching upon the provisions of Articles 14 and 16 of the Constitution of India, it was observed as follows:-

“43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because, an employee had continued under cover of an order of Court, which we have described as 'litigious employment' in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is

found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.”

33. It was also held that persons engaged on temporary/ contractual/ ad-hoc basis are not entitled to get benefit of the principle of equal pay for equal work.

34. In the present case, if apart from relaxation in age, exemption from passing STET and weightage upto 24 marks towards experience gained as guest faculty teachers is given to the guest faculty teachers, then it would virtually amount to their regularization in service, that too, without following the proper procedure for selection and contrary to the pronouncement made by the Hon'ble Supreme Court in Uma Devi's case (*supra*).

35. Mr.Hooda, to give weightage to the guest faculty teachers, towards experience gained by them, has placed reliance upon a judgment of the Hon'ble Supreme Court in Suresh Kumar v. State of Haryana 2001 (3) S.C.T. 146. That was a case, in which, selection of more than 1600 constables was under challenge. The same was made more than five years prior to the date when order was passed by the Hon'ble Supreme Court. It was found that the selection was made without any advertisement in the newspaper or without calling names from the Employment Exchange. Findings given to that extent by a Division Bench of this Court were upheld and the appeals filed by the selected candidates were disposed of by giving some directions, one of which reads thus:-

“4. In the matter of selection the selecting authority would obviously give some preference to the experience gained by these selectees, who have been appointed and are continuing in service.”

36. This Court feels that on the basis of the above said observation, which was peculiar to the facts of that case only, the State of Haryana cannot be permitted to grant benefit to the guest faculty teachers. The said direction was given by the Hon’ble Supreme Court by noting that after being selected in service, the candidates had undergone training and thereafter continued in service for about five years. This direction might have been given after taking note of the amount spent upon their training etc. Otherwise also, the above said judgment was delivered before the judgment by a larger bench of the Hon’ble Supreme Court in *Uma Devi’s case (supra)*. As such, no benefit of the same can be given to the respondent-State.

37. It is true, that the State has power, under the 1998 Rules, to relax the conditions for entry in service as per Rule 17 of these Rules. The said provision Rule reads thus:-

“17. Power of relaxation:- Where the Government is of the opinion that it is necessary or expedient so to do, it may, by order for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of persons.”

38. It is clearly mandated that for any relaxation, a reasoned order has to be passed to relax any of the provisions of these rules with respect to any class or category of persons. With the written statement, no material has been supplied to show that at any point of time mind was applied, before giving relaxation in qualification and weightage to the guest faculty teachers. Even at the time of arguments, nothing was shown to us in that regard. It is apparent from the record that when advertisement (Annexure

P7) for regular selection, was issued on 17.7.2009, no exemption, from passing the STET, weightage towards experience, was provided in favour of the guest faculty teachers. Under what circumstances and on what ground, corrigendum granting above said benefit was issued, is not forthcoming from the record.

39. The very basis of a reasoned order has to be reasonable so as to survive a challenge under Articles 14 and 16 of the Constitution of India. In our view quite apart from lack of reasons, from the findings recorded in this judgment the relaxations save and except the age relaxation which has not been seriously challenged has been found by us to run counter to the mandate of Articles 14 and 16 of the Constitution of India.

40. This Court is further of the view that there is no occasion for the State to relax conditions of passing the STET, as has been done in the case of guest faculty teachers. The said qualification was incorporated in the Rules by making an amendment in the year 2008. All other candidates, except the guest faculty teachers, are required to pass that Test, otherwise, they are not eligible to compete for the posts in question. If the guest faculty teachers without passing STET, are taken in service, it would amount to giving benefit to the candidates lower in merit. Teachers are the builders of the nation and if the foundation is weak, it is not expected that the nation will progress in the right direction. No reason has been given as to why the guest faculty teachers could not and should not have passed the test, after the date, when it was incorporated as a qualification in the Rules in the year 2008.

41. Mr.G.K.Chatrath, learned senior Advocate has tried to impress upon us that to add additional qualification, for selection as lecturers, is the prerogative of National Council for Teacher Education (in short, the

Council). The said authority has not added aforesaid qualification for selection to the post in question. Be that as it may, the Council has laid down the minimum qualification. It is always open to the employer to add to the minimum qualification to select a candidate against a particular post. Otherwise also, no challenge has been laid by anybody to the passing of qualification of STET, as a condition precedent, to be eligible for the post, in dispute.

42. In so far as age relaxation is concerned the guest faculty teachers who have worked in schools may have lost out on other employment. To deny such teachers age relaxation would be unjust. In any case, the age relaxation was not seriously challenged before us and we are upholding the age relaxation to the guest faculty teachers.

43. In view of aforesaid discussion, it is evident that the grant of exemption from passing the STET and weightage of upto 24 marks towards experience to the guest faculty teachers is not justified and runs contrary to the provisions of Articles 14 and 16 of the Constitution of India. The Hon'ble Supreme Court in State of Jharkhand and others v. Bijay Kumar and others, AIR 2008 Supreme Court 1446, while dealing with a similar controversy, observed that “*constitutional guarantee of equality as envisaged under Articles 14 and 16 of the Constitution of India must be protected. While passing one order or the other, we should not forget the interest of those who are not before us, citizens have human right of development and offer of appointment on such posts should be directed to be made only on merit.*”

44. There are always more aspirants in the field of public employment with each passing year. Thousands of candidates may have acquired similar or higher qualifications after the date, when guest faculty

teachers were taken in service in the year 2005-2006. Those who may have become eligible now, are not likely to be successful, if exemption from passing STET and award of upto 24 marks towards experience upheld in favour of guest faculty teachers. Constitutional guarantee of equal opportunity in public service, as envisaged under Articles 14 and 16 of the Constitution has to be protected. All the applicants have equal right of being considered for selection and the posts are supposed to be filled up only by selecting the meritorious candidates.

45. As has been mentioned earlier, no serious challenge has been made by any of the applicants to the relaxation in age granted in favour of guest faculty teachers.

46. Accordingly, we allow these writ petitions and set aside grant of exemption to the guest faculty teachers from passing the School Teachers Eligibility Test (STET) and further grant of weightage upto 24 marks towards experience gained by the guest faculty teachers. Accordingly, corrigendum dated 3.7.2009 to that extent stands quashed. However, it is made clear that it will be open to the respondent-State to grant reasonable weightage towards experience gained by service in government or private institutions to all the competing candidates, as per law.

(JASBIR SINGH)
JUDGE

6.04.2010
gk

(MUKUL MUDGAL)
CHIEF JUSTICE