

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

CWP No. 4562 of 2009

Date of Decision: April 01 , 2009

Dalip Singh and others

..... Petitioners

Versus

State of Haryana and others

..... Respondents

Coram: Hon'ble Mr. Justice Ajay Tewari

Present: Mr. Anurag Goyal, Advocate
for the petitioners.

Mr. Harish Rathee, Senior DAG, Haryana.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?
- 4.

Ajay Tewari, J.

This writ petition has been filed challenging the policy Annexure P-4 dated 2.3.2009. As per this policy conditions of service of Guest Teachers have been drastically changed. For instance, instead of being paid per period taken they would be paid a monthly salary; instead of being termed as Guest Faculty they would be termed as contractual employees; they would get the benefit not only of normal holidays but also school vacations etc.

The argument of learned counsel for the petitioners is that under the old policy Guest Faculty was inducted only to take care of the needs of students at a time when regular appointments were on the anvil. Several restrictive clauses (like preference to be given to persons from the same village/town etc.) were tolerated because of the extremely transient nature of the appointment and the fact that the payment made was quite

negligible. Reliance is placed on a decision of this Court in the case of **Baldev Singh and others v. State of Haryana and others** CWP No. 387 of 2007 decided on August 30, 2007. In that case persons working as Guest Faculty had filed writ petitions for direction to allow them to continue till regular appointments are made.

Ultimately the Hon'ble Division Bench on the basis of the arguments of the State dismissed the petitions holding as follows:-

“After hearing counsel for the parties, we are of the considered view that the Policy of appointing Teachers as Guest Faculty Teachers was introduced by the State Government so as to provide uninterrupted education to the students. As the Education Department is a huge Department in which posts of Lecturers remain vacant due to death/retirement/resignation, promotions etc. of Teachers, therefore, in order to ensure that studies of the students do not suffer hence, the State Government decided to engage Lecturers as Guest Faculty. Accordingly the Principals were directed to appoint Lecturers on period basis on a fixed remuneration for a fixed period up to 31.3.2007. The petitioners themselves requested that they be engaged for a specific period on a fixed remuneration and hence now they cannot claim that they should be allowed to remain inservice till regular appointments are made. 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.”

Learned counsel for the petitioners has argued that in view of this judgment the new policy which also envisages retention of previously inducted Guest Faculty would amount to permitting the Government to do indirectly what it could not do directly.

Learned counsel for the respondent-State sought to justify the policy (and the logical corollary) of permitting the engaged persons to continue on the ground that no substantial change would be made in the status of such employees. As per him the main difference is in the remuneration. He argues that under the Sixth Pay Commission the salary of a JBT Teacher has increased almost 2 ½ times and that is why the respondents have thus given a proportionate increase to the Guest Faculty who may be allowed to continue under the new scheme. In my opinion this argument is not totally correct. It is not only a proportionate increase in the salary, rather the entire nature of appointment has been changed, as noticed above. The arguments pressed into use by the respondent-State in the case of Baldev Singh (*supra*) can be effectively used against this proposed policy.

The second argument of learned counsel for the respondents is that even if this policy is set aside the petitioners would not get any benefit as the retention of Guest Faculty would be permissible under the old policy which has not been challenged. Thus as per him this writ petition cannot

proceed further. In my opinion the policy in so far as it gives some semblance of certainty and continuity and decent remuneration cannot be faulted. The only fly in the ointment is the fact that the persons who are to man the posts could not be inducted as per the principles enshrined in Article 16 of the Constitution of India. Thus the policy would be perfectly just and fair in case a direction is issued that all inductions be made after giving public notice and without the restrictive field of choice.

Learned counsel for the respondents has, however, argued that at present the existing Guest Faculty is required for the purpose of conducting school examinations and that it would be simply impossible for the respondents to induct fresh persons on thousands of posts which are currently being retained by Guest Faculty. In my opinion there is some merit in this argument. Consequently it is directed that the persons already working as Guest Faculty would not be allowed to continue beyond 15th of May , 2009 (that is the date of onset of summer vacations). If the respondents wish to induct any person on contractual basis under the new policy they may do so after fulfilling the conditions of Article 16. It is made clear that it would not be permissible to have a restricted field of choice for this purpose like village/town.

With these observations this writ petition is disposed of.

Copy of this order be given to the learned Sr.DAG under the signatures of the Reader.

(AJAY TEWARI)
JUDGE

April 01, 2009
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