

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

Dated : 23-07-2016

SWP No.2045/2007, MP No.2961/2007; SWP No.2047/2007, MP No.2963/2007; & SWP No.2048/2007, MP No.2964/2007

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| 1. Abdul Wani Naik | Vs. | State thru. State of J&K & Ors. |
| 2. Manzoor Ahmad Wani | Vs. | State thru. State of J&K & Ors. |
| 3. Sunil Kumar | Vs. | State thru. State of J&K & Ors. |
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Coram:

Hon'ble Mr. Justice Ramalingam Sudhakar, Judge

Appearing Counsel:

For petitioner(s) : Mr. D.S. Chouhan, Advocate

For Respondent(s) : Mr. Ravinder Gupta, AAG

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| i) | Whether approved for reporting in Digest/Journal/Media | Yes/No |
| ii) | Whether approved for reporting in Digest/Journal | Yes/No |
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1. In these three cases, 10+2 Lecturers of School Education Department working in contract engagement are before the Court. They are seeking regularization of their services and a direction to the respondents restraining them not to replace the petitioners with another set of contractual temporary employees.

2. This Court has already dealt with the similar controversy in batch of writ petitions, lead case as **SWP No.362/2008, Bindu Mati & Anr. Vs. State thru. State of J&K & Ors**, decided on 4th July, 2016.

3. On the first relief regarding regularization of their services, this was considered and declined in Division Bench case titled **State of J&K Vs. Afshan Majid, reported as 2008 (2) J.K.J. 550** and followed by the Single Judge, to be more specific in the case titled **Suman Sharma Vs. State of J&K, reported as 2009 (2) J.K.J. 173**. In that in paragraph 18, it has been held as follows:

"18. For the reasons mentioned above and in view of the afore-quoted observations made by the Division of this Court in cases referred to above, these petitions are disposed of with the following directions:-

I/ That the petitioners are not entitled to regularization of their services against the posts they have been engaged on contract/temporary basis as the said engagement has been done without following any procedure as provided for filling up the post belong to State-Cadre;

II/ That the petitioners shall be allowed to continue till the posts are filled up by a regular selection process. The State respondent,

however, shall be free to continue this engagement of the petitioners only if there is requirement to engage them keeping in view the interest of students who are studying in particular colleges;"

4. This position has not been changed so far. The decision of the Court was based on the premise that contractual 10+2 Lecturers of School cannot seek regularization of services when they have been engaged on contract/temporary basis and also since their engagement has not been done following due procedure for filling up the State-Cadre posts. In view of the settled legal position, the first relief is declined.

5. In so far as replacement of 10+2 Lecturers of School working on contract engagement is concerned, engaging them on contract basis year after year, the Lecturers who are engaged previously are being displaced or substituted with another set of contractual employees and this has affected their rights. This appears to be their grievance.

6. It is the case of respondents that they are not resorting to such a procedure of replacing contract teachers/lecturers by another set of contract teachers/lecturers. The engagement is need based. In

any event, the lecturers on contract or engaged on academic arrangement cannot seek to restrain the government from engaging lecturers on contract engagement or academic arrangement as they themselves are beneficiary of such procedure. This issue becomes academic because petitioners are appointed on academic arrangement.

7. On this issue also, Courts have taken a view to safeguard ousting of contract engagements only for the purpose of accommodating new incumbents on contract basis. In this regard, it will be useful to refer judgment of Hon'ble Supreme Court in case titled **State of Haryana Vs. Piara Singh and Others reported as AIR 1991 SC 223** referring to the following observations:

".....In State of Haryana Versus Piara Singh, 1992 (4) SC 118 of 152, this Court had held that the normal rule is recruitment through the prescribed agency but due to administrative exigencies, an adhoc or temporary appointments may be made in such situation, this Court held that efforts should always be made to replace such adhoc or temporary

employee by regularly selected employees, as early as possible. Temporary employees also would get liberty to compete along with others for regular selection but if he does not get selected, he must give way to the regularly selected candidates. Appointment of the regularly selected candidates cannot be withheld or kept in abeyance for the sake of such an adhoc or temporary employee. Adhoc or temporary employee should not be replaced by another adhoc or temporary employee. He must be replaced only by regularly selected employee."

8. The said ratio will apply to the petitioners only if they are sought to be replaced by another set of teachers/lecturers on academic arrangement.

9. This Court hastens to hold that academic arrangement teachers/lecturers cannot seek to hold on to their post for ever. If they are found not to be up to the mark or efficient then their continuation will be a question mark. It is for the authorities to decide the best course of action in a non-arbitrary manner. If academic arrangement teachers/lecturers seek

extension then they have to make a representation for considering the extension of service, which can be considered on its own merits.

10. The writ petitions stand disposed in the aforesaid terms along with connected MPs.

(Ramalingam Sudhakar)
Judge

Jammu
23-07-2016
Secretary