

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

SWP No. 1636/2013
MP No. 2386/2013

Date of Order: 11.08.2016

Tajinder Singh.

Vs. State of J&K & ors.

Coram:

Hon'ble Mr. Justice Ramalingam Sudhakar, Judge.

Appearing Counsel:

For the Petitioner(s): Mr. M. I. Sherkhan, Advocate.

For the Respondent(s): Mr. Ajay Sharma, AAG.

i/	Whether to be reported in Press/Media	:	Yes/No
ii/	Whether to be reported in Digest/Journal-Net	:	Yes/No

1. Through the medium of this writ petition, petitioner seeks following relief(s) as per his Trade and his engagement in ITI Poonch on academic arrangement for fixed term basis:

i) Issue Writ of Mandamus commanding the respondents to allow the petitioner to work as Instructor in Electrician Trade in ITI Poonch, in view of the appointment of the petitioner vide Order No. DDJ/Aca/1946-48 dated 18.08.2012 under Self Finance Scheme, till the scheme is going on or till the vacancy is filled up on substantive basis after adopting due process of selection. And may allow the petitioner to participate in the selection process if initiated. And may quashing the order of appointment of the petitioner to the extent of

automatic termination of the petitioner without passing further order on 31.07.2013 being illegal and discriminatory.

ii) Issue writ of prohibition, prohibiting the respondents from terminating/disengaging the petitioner from post of Instructor in Electrician Trade in ITI Poonch and making appointment of any other candidate/person on the place of petitioner, till the scheme of Self Finance is existing or vacancy is filled up on substantive basis after due process of selection.

2. The writ petition is admitted. Post admission notice.
3. Mr. Ajay Sharma, Additional Advocate General accepts notice.
4. Insofar as relief i) and ii) sought in the writ petition are concerned, same has been already covered by the judgment passed by this Court on 14.07.2016 in **SWP No. 1525/2013 in case titled Rajani Kumar Vs. State of J&K & others** along with connected matters while placing reliance upon judgment reported in **2008(2) JKJ 550, 2009(2) JKJ 173, AIR 1991 SC 223**. Para Nos. 20 and 14 to 19 of which reads as under:

“20. 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.”

“14. The next relief Sr. No.(D) to prohibit the respondents from replacing/substituting the petitioners by another set of contractual appointee or by transferring regularly recruited Lecturers from one institution to another till their cases for confirmation/regularization against the post of Lecturers are considered by the Empowered Committee constituted under Section 10 of the Act. This prayer has three aspects. One is the confirmation and second is the regularization. Ist two parts of the prayer are inapplicable in the case of these petitioners as their appointments were made on academic arrangement basis. The third aspect is replacing contract employees by another set of contract employees.

15. This Court has taken a view in case titled **Vidhu Puri & Ors. Vs. State thr. Higher & Tech. Edu. Deptt. & Ors. and batch of cases (SWP No.209/ 2003 and connected matters)** decided on 04-07-2016 on the basis of decisions considered and declined in Division Bench case titled **State of J&K Vs. Afshan Majid, reported as 2008 (2) J.K.J. 550**, which decision was again 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**. The same was followed in subsequent decisions. This Court also followed in its earlier decision in batch of writ petitions,

lead case as **SWP No.209/2003, Vidhu Puri & Ors. Vs. State thr. Higher & Tech. Edu. Deptt. & Ors.**, decided on 14-07-2016.

16. 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. 17. 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.

18. 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.

19. The relief of prohibiting the respondents from replacing/ substituting the petitioners by transferring regularly recruited Lecturers from one institution to another till their cases for confirmation/regularization against the post of Lecturers are considered, has been dealt with by Hon'ble Supreme Court in case titled **Dr. Kishore Vs. State of Maharashtra, reported as 1997(1) 107 : 1997 (3) SCC 209**, wherein their Lordships observed as under:

—It is contended by the learned counsel for the petitioner that since vacancies are existing the appointment of Dr. Solanki by transfer could not be used as a means to terminate the service of the petitioner. We fail to appreciate the contention. It is fairly agreed by the learned counsel that the petitioner has no right to the post and as soon as a duly selected candidate is posted in his place, he has to give place to the duly selected candidate. But his contention is that since Dr. Solanki was selected earlier to the order passed by the Tribunal and had been appointed on his transfer, it cannot be used as a means to terminate the services of the petitioner. His contention absolutely has no force. As soon as the duly selected candidate is posted, whether

directly or by transfer, necessarily the petitioner has to give place to such a candidate. The petitions, therefore, do not merit interference.}}

Therefore, the said plea has no legal basis.”

5. Hence, the writ petition stands disposed of in the above terms.

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**(Ramalingam Sudhakar)
Judge**

Jammu:

Sunita.

11.08.2016

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