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**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE RAVI MALIMATH,
CHIEF JUSTICE
&
HON'BLE SHRI JUSTICE VISHAL MISHRA
ON THE 21st OF MARCH, 2024
WRIT PETITION No. 3137 of 2024**

BETWEEN:-

1. **RAJBHAN DWIVEDI S/O ANAND BIHARI DWIVEDI,**

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.....PETITIONERS

(BY KU. NEELAM GOEL - ADVOCATE)

AND

1. THE STATE OF MADHYA PRADESH THROUGH ITS PRINCIPAL SECRETARY SCHOOL EDUCATION DEPARTMENT VALLABH BHAWAN BHOPAL (MADHYA PRADESH)

2. THE COMMISSIONER / DIRECTOR LOK SHIKSHAN SANCHANALAYA GAUTAM NAGAR HOUSING BOARD COLONY BHOPAL BHOPAL (MADHYA PRADESH)

3. THE SECRETARY EMPLOYEES SELECTION BOARD CHAYAN BHAWAN MAIN ROAD NO 1 CHINAR PARK (EAST BHOPAL) (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRIS S CHOUHAN - GOVERNMENT ADVOCATE)

This petition coming on for admission this day, Hon'ble Shri Justice Vishal Mishra passed the following:

ORDER

The present petition has been filed seeking the following reliefs :-

"(i) To issuance a writ in the nature of mandamus, Hon'ble Court be pleased to direct the respondent to regularize the petitioners on the post of Primary, Middle and Ucha Madhyamik Sikshak.

(ii) That by issuance of writ in the nature of mandamus, Hon'ble Court be pleased to direct the respondent to decide the representation filed by the petitioners for their regularization.

(iii) Any other writ/direction/order which this Hon'ble Court deems fit and proper including cost of this petition may kindly be granted"

2. It is the case of the petitioners that they have been working on the post of Guest Faculty Grade-I, Grade-II and Grade-III for the last five to twelve years. They have also passed the Teachers Eligibility Test and are having B.Ed and D.Ed qualifications and therefore, they are entitled for absorption/regularisation on the said posts. The Directorate of Public Education, Bhopal by a circular dated 11.09.2019 had issued directions regarding regularization of Athithi Shishak and a similar circular has been issued on 09.09.2022. The petitioners have made representation before the respondents for their regularisation, but the same has not been decided till date. Hence, this petition.

3. A perusal of the record indicates that the petitioners have been working as a Guest Faculty and they are still in service. The Guest Teachers are contractual employees and they are being appointed for an academic session and in terms of the series of judgments passed by the Hon'ble Supreme Court as well as by

this Court, the Guest Faculty cannot be replaced by another set of Guest Faculty. The petitioners have been permitted to continue on the post of Guest Faculty. But as far as claiming the benefits equivalent to that of a regular employee is concerned, there cannot be any similarity between a Guest Teacher and that of a regularly appointed Teacher. Counsel for the petitioners has failed to demonstrate the aforesaid aspects of the matter. Therefore, claiming the relief equivalent to that of the regular employees is not permissible. Both the cadres of employees i.e. the Guest Teacher and the regular teacher cannot be equalized. Regularization cannot be claimed as a matter of right. The petitioners are only working as guest faculties on contract basis for an academic session subject to continuation of their services looking to their performance.

4. As far as rights of contractual employees are concerned, they do not have any right asking for regularization of their services. The law with respect to contractual employees is settled by the Hon'ble Supreme Court in the case of State Bank of India Vs. S.N. Goyal reported in (2008) 8 SCC 92 wherein, it is held as under:-

"Where the relationship of master and servant is purely contractual, it is well settled that a contract of personal service is not specifically enforceable, having regard to the bar contained in section 14 of the Specific Relief Act, 1963. Even if the termination of the contract of employment (by dismissal or otherwise) is found to be illegal or in breach, the remedy of the employee is only to seek damages and not specific performance. Courts will neither declare such termination to be a nullity nor declare that the contract of employment subsists nor grant the consequential relief of reinstatement. The three well recognized exceptions to this rule are:

(i) where a civil servant is removed from service in contravention of the provisions of Article 311 of the Constitution of India (or any law made under Article 309);

(ii) where a workman having the protection of Industrial Disputes Act, 1947 is wrongly terminated from service; and

(iii) where an employee of a statutory body is terminated from service

in breach or violation of any 7 mandatory provision of a statute or statutory rules.

There is thus a clear distinction between public employment governed by statutory rules and private employment governed purely by contract. The test for deciding the nature of relief damages or reinstatement with consequential reliefs is whether the employment is governed purely by contract or by a statute or statutory rules. Even where the employer is a statutory body, where the relationship is purely governed by contract with no element of statutory governance, the contract of personal service will not be specifically enforceable. Conversely, where the employer is a non-statutory body, but the employment is governed by a statute or statutory rules, a declaration that the termination is null and void and that the employee should be reinstated can be granted by courts."

5. A Division Bench of this Court in W.A. No.617 of 2015 (Brijendra Gupta vs. State of M.P. and others) and bunch of writ appeals decided on 18.03.2016 has considered the similar analogy and has held as under:-

*"Each of the appellants accepted these conditions and were fully aware that their services would be continued on contract basis only for a period of 2 years. It is a different matter that the appellants were continued in service, but, by extending contract period, their appointment nevertheless, shall remain on contract basis. No document or Regulation has been filed by the appellants and atleast brought to our notice, which may even remotely suggest that there was an agreement reached between the parties that on completion of 5 years of contractual service the concerned employee would be regularized in service. The fact that the appellants have now become over age and will not be eligible for appointment elsewhere, cannot be the basis to answer the controversy. **The matter has to be answered keeping in mind that the contractual employee cannot insist for regularization in absence of policy, scheme or regulation having the backing of law and enforceable against the employer. In the present case, no such document has been brought to our notice. As a result, it is not open to this Court to issue writ to direct the respondents to regularize the appellants in service. The fact that the appellants have served the respondent/Company for almost five years, by itself, cannot be the basis to issue such direction unless it is a case of legally enforceable right which has enured in favour of the appellants. That is not the case at hand.**"*

6. The only distinguishing feature of Guest Faculty and contract employee is that they being teachers in the department having been appointed after facing the

appointment procedure, cannot be replaced by another Guest Faculty. Other conditions of contract employees are same. Probably for this reason, it was held that Guest Faculty who has taught in the earlier session cannot be replaced by another Guest Faculty. In absence of any rules, regulations or circulars for regularisation of a guest faculty, no mandamus can be issued directing the authorities for regularization of the petitioners. Mere continuous working for some time on contract basis does not entitle the petitioners to claim regularization. Under these circumstances, no relief can be extended to the petitioners. However, the petitioners are always at liberty to pursue their pending representations.

7. The writ petition *sans* merit and is accordingly dismissed. No order as to costs.

(RAVI MALIMATH)
CHIEF JUSTICE

sj

(VISHAL MISHRA)
JUDGE

