



**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

MA 3924/2019
OA 2302/2019

Reserved on: 17.12.2019
Pronounced on: 23.01.2020

Hon'ble Mr. S.N.Terdal, Member (J)
Hon'ble Mr. A.K.Bishnoi, Member (A)

1. MS. KAVITA PH
AGE ABOUT 43 YEARS
D/O PARTAP SINGH
R/O 409 BAZAR PANNA VILLAGE KARALA
DELHI-110081
POST – PART TIME INSTRUCTOR
COLLEGE- TILAK NAGAR
2. POOJA
AGE ABOUT 26 YEARS
D/O YADRAM
R/O A 496 SABOLI PARTAP NAGAR
S.NDELHI 110093
POST – PART TIME INSTRUCTOR
COLLEGE- CV RAMAN ITI DHEERPUR
3. NISHA
AGE ABOUT 31 YEARS
D/O SATISH CHANDERA
R/O B 368 RAJIV GANDHI MARG,
SWROOP NAGAR DELHI 110042
POST – PART TIME INSTRUCTOR
COLLEGE- CV RAMAN ITI DHEERPUR
4. PRIYANKA CHAUBEY
AGE ABOUT 29 YEARS
D/O LAVAKUSH
R/O DWARKA SECTOR-16, N.D. 78
POST – PART TIME INSTRUCTOR
COLLEGE- ITI HASTAL
5. MOHIT YADAV
AGE ABOUT 25 YEARS
S/O VIJAY PAL
R/O VPO PHULERA THANA
CHANDINAGAR BAGHPAT UP
POST – PART TIME INSTRUCTOR
COLLEGE- CV RAMAN ITI DHREERPUR
6. DHIRAJ
AGE ABOUT 34 YEARS
S/O SUBE SINGH
R/O VPO FATHEPURI DARAULI DISTT.
REWARI (HR) 123411



POST – PART TIME INSTRUCTOR
COLLEGE- CV RAMAN ITI DHREERPUR

7. ANWIN MATHEW CHACKO
AGE ABOUT 29 YEARS
S/O CHACKO MM
R/O BC, BLOCK HOUSE NO 117C,
SHALIMAR BAGH EAST NEST NEW DELHI 88
POST -PART TIME INSTRUCTOR
COLLEGE- CV RAMAN ITI DHEERPUR
8. SWETA
AGE ABOUT 27 YEARS
D/O LEKH RAJ
R/O HOUSE NO C88 INDER ENCLAVE
PHASE 1 KIRARI SULEMAN NAGAR DELHI
POST -PART TIME INSTRUCTOR
COLLEGE- CV RAMAN ITI DHREERPUR
9. VIJAY KUMAR
AGE ABOUT 29 YEARS
S/O RAJENDER KUMAR
R/O 46 NEAR BREADE FACTORY
POOT KHURD, DELHI 110039
POST -PART TIME INSTRUCTOR
COLLEGE- CV RAMAN ITI DHEERPUR
10. VARUN MUDGAL
AGE ABOUT 28 YEARS
S/O ARUN KUMAR
R/O 943 PARINAAM E BLOCK OMAXE
CITY SEC 18 SONIPAT
POST -PART TIME INSTRUCTOR
COLLEGE - CV RAMAN ITI DHREERPUR
11. NEHA
AGE ABOUT 28 YEARS
D/O RAJ KUMAR
R/O G 163 ST NO 11 SWAROOP NAGAR
DELHI 110042
POST -PART TIME INSTRUCTOR
COLLEGE- CV RAMAN ITI DHEERPUR
12. MONU KUMARI
AGE ABOUT 25 YEARS
D/O KRISHAN CHAND
R/O HOUSE NO 178 WD NO 3
GUPTA COLONY TOHANA (HR)
POST -PART TIME INSTRUCTOR
COLLEGE - CV RAMAN ITI DHEERPUR



13. MEENA KUMARI
AGE ABOUT 31 YEARS
D/O MEHAR CHAND
R/O VPO CHAUDARIWAS TEH & DISTT.
HISAR HR
POST -PART TIME INSTRUCTOR
COLLEGE- CV RAMAN ITI DHREEPUR
14. PURAN CHAND
AGE ABOUT 35 YEARS
S/O DESH RAJ
R/O HNO 523 JAJAB MOHALLA BADLI
DELHI 110042
POST -PART TIME INSTRUCTOR
COLLEGE- CV RAMAN ITI DHEERPUR
15. SAMAR JAHAN
AGE ABOUT 27 YEARS
D/O ISLAMUDDIN
POST -PART TIME INSTRUCTOR
COLLEGE- ITI HASTAL
16. ANAND GARG
AGE ABOUT 26 YEARS
S/O NAND LAL GARG
R/O 1/2-30 BUDHVIHAR PH-1 ND-86
POST -PART TIME INSTRUCTOR
COLLEGE- ITI JHANGIRPURI
17. MANJEET KUMAR
AGE ABOUT 31 YEARS
S/O DHARMPAL
R/O VPO JODHKON SIRSA HR
POST -PART TIME INSTRUCTOR
COLLEGE- ITI JHANGIRPURI
18. VINAY KUMAR
AGE ABOUT 29 YEARS
S/O MUNINDRA KUMAR
R/O E-541,GALI NO.-18 AMAR COLONY
GOKALPUR DELHI
POST -PART TIME INSTRUCTOR
COLLEGE- ITI JHANGIRPURI
19. BEANT SINGH
AGE ABOUT 28 YEARS
S/O PALU RAM
R/O VPO -JAMALPUR SHEKHAN
FATEHBAD (HR)
POST -PART TIME INSTRUCTOR
COLLEGE- ITI JHANGIRPURI



20. MOHANI
AGE ABOUT 30 YEARS
D/O JAGDISH
R/O VPO- DHAMTAN SAHIB TEHSIL
NARWANA JIND (HR)
POST -PART TIME INSTRUCTOR
COLLEGE- ITI PUSA
21. NITISH
AGE ABOUT 24 YEARS
S/O LAKSHMI PRASAD
R/O H.NO.-46 KRISHI KUNJ INDERPURI
NEW DELHI 110012
POST -PART TIME INSTRUCTOR
COLLEGE- ITI PUSA
22. MOHAN SINGH
AGE ABOUT 29 YEARS
S/O VIJENDER SINGH
R/O VPO BAWANI KHERA P.O &
TEHSIL BAWANI KHERA 127032
POST -PART TIME INSTRUCTOR
COLLEGE- ITI PUSA
23. ANNU
AGE ABOUT 25 YEARS
D/O RAMESH CHAND
R/O VPO BELRKHA TEHSIL NARWANA
DISTT JIND (HR)
POST -PART TIME INSTRUCTOR
COLLEGE- ITI PUSA
24. RAJNI KUMARI
AGE ABOUT 31 YEARS
D/O HARI KISHAN
R/O B 631, AVANTIKA ROHINI SECTOR 2
DELHI
POST -PART TIME INSTRUCTOR
COLLEGE- ITI PUSA
25. VANDANA
AGE ABOUT 31 YEARS
D/O SHRI. BHAGWAN
R/O A-41/C MANSARA RAM PARK
UTTAM NAGAR
POST -PART TIME INSTRUCTOR
COLLEGE- ITI JAIL ROAD
26. SPARSH MUDGAL
AGE ABOUT 23 YEARS
S/O ARUN KUMAR
R/O 943 PARINAAM E BLOCK OMAXE CITY
SEC 18 SONIPAT



POST -PART TIME INSTRUCTOR
COLLEGE- ITI JAIL ROAD

27. ANUP KUMAR
AGE ABOUT 25 YEARS
S/O RAM KUMAR
R/O VPO BHAINI BADSHAH PUR
HISSAR (HR) 125121
POST -PART TIME INSTRUCTOR
COLLEGE- ITI JAFFARPUR KALAN
28. PRATEEK SRIVASTVA
AGE ABOUT 26 YEARS
S/O BIPIN BEHARI SRIVASTVA
R/O 755-J GANESH PURAM RAPTI NAGER
PHASE 1 GORAKHPUR 273003
POST -PART TIME INSTRUCTOR
COLLEGE- ITI JAFFARPUR KALAN
29. VINOD KUMAR
AGE ABOUT 30 YEARS
S/O SEWA SINGH
R/O VPO DANODA KALAN TEHSIL
NARWANA JIND (HR)
POST -PART TIME INSTRUCTOR
COLLEGE- ITI JAFFARPUR KALAN
30. SANDEEP
AGE ABOUT 28 YEARS
S/O SINGARA RAM
R/O VPO MOHANGARH TEHSIL
NARWANA JIND (HR) 126115
POST -PART TIME INSTRUCTOR
COLLEGE- ITI JAFFARPUR KALAN
31. AMARJIT
AGE ABOUT 28 YEARS
S/O OM PARKASH
R/O H.NO. 977/1 INDRA COLONY TOHANA
POST -PART TIME INSTRUCTOR
COLLEGE- ITI JAFFARPUR KALAN.
32. NAVEEN CHOUDHARY
AGE ABOUT 30 YEARS
S/O PRAHLAD SINGH
R/O 43-B NAVYUG ADARSH APP F-BLOCK
VIKAS PURI DELHI
POST -PART TIME INSTRUCTOR
COLLEGE- BTC PUSA
33. JYOTI PANCHAL
AGE ABOUT 33 YEARS
D/O SH. RAJENDER KUMAR PANCHAL



R/O 457/16. GALI NO.3
NEAR SOAP FACTORY. CHOPRA COLONY
ROHTAK ROAD GOHANA HARYANA-131301
POST -PART TIME INSTRUCTOR
COLLEGE- ITI NARELA

34. RICHA
AGE ABOUT 26 YEARS
D/O BRAJAUTAR SAXENA
R/O C3 TOWER FLAT NO-602
PANCHSHEEL GREENS,
GREATER NODIA-201009
POST -PART TIME INSTRUCTOR
COLLEGE- ITI VIVEK VIHAR
35. DURGA
AGE ABOUT 29 YEARS
D/O AZAD SINGH
R/O 450/57 NEAR RLY CROSSING BIJWASAN
DELHI 77
POST -PART TIME INSTRUCTOR
COLLEGE- BTC PUSA
36. SITA RAM
AGE ABOUT 33 YEARS
S/O DHARM SINGH
R/O VPO ASSAN TEHSIL &
DISTT JIND (HR) 126102
POST -PART TIME INSTRUCTOR
COLLEGE- ITI NAND NAGRI
37. NAVEEN UPADHYAY
AGE ABOUT 26 YEARS
S/O UMESH UPADHYAY
R/O C 11/207 YUMNA VIHAR
DELHI 110053
POST -PART TIME INSTRUCTOR
COLLEGE- ITI NAND NAGRI
38. NISTHA SHARMA
AGE ABOUT 28 YEARS
D/O SUNEEL DUTT
R/O C -BLOCK H.N. 206 STREET NO. 22
KHAJURI KHAS DELHI 110094
POST -PART TIME INSTRUCTOR
COLLEGE- ITI NAND NAGRI
39. HEMLATA KASHYAP
AGE ABOUT 32 YEARS
D/O BHAGAT NARYAN KASHYAP
R/O 9/6070 KAYSHAP MARG
GANDHI NAGER NEAR POLICE STATION
DELHI 31



POST -PART TIME INSTRUCTOR
COLLEGE- ITI NAND NAGRI

40. NAZMEEN
AGE ABOUT 27 YEARS
D/O MOHD. GHALIB HASAN
R/O B-45 PH-2 GOUTAMPURI
NEAR BADERPUR NEW DELHI 110044
POST -PART TIME INSTRUCTOR
COLLEGE- ITI NAND NAGRI
41. MONIKA CHOUDARY
AGE ABOUT 27 YEARS
D/O SATYDEV SINGH
R/O VPO KUNDALIYA TEHSIL SIMBHAL
DISTT. HAPUR (UP)
POST -PART TIME INSTRUCTOR
COLLEGE- ITI NAND NAGRI
42. KRISHAN KUMAR
AGE ABOUT 28 YEARS
S/O RATTAN SINGH
R/O VPO ANCHERA KHURAD
TEHSIL SAFIDON DISTT JIND (HR)126112
POST -PART TIME INSTRUCTOR
COLLEGE- ITI MANGOL PURI
43. RAHUL ARORA
AGE ABOUT 29 YEARS
S/O SHYAM SUNDER ARORA
R/O ORIENTAL APPARTMENT B-BLOCK 91
SECTOR 9 CITIZEN CHOWK DELHI
POST -PART TIME INSTRUCTOR
COLLEGE- ITI MANGOL PURI
44. ANCHAL SHARMA
AGE ABOUT 23 YEARS
D/O SUNIL DUTT
R/O BLOCK H.N. 206 STREET NO. 22
KHAJURI KHAS DELHI 110094
POST -PART TIME INSTRUCTOR
COLLEGE- ITI HASTHAL
45. ANUJ
AGE ABOUT 34 YEARS
S/O MAM CHAND SINGH
R/O VILLAGE SHYAMPUR POST OFFICE
HAPUR DISTT- HAPUR UP-245101
POST -PART TIME INSTRUCTOR
COLLEGE- ITI AKS NIZAMUDDIN



46. RAHUL
AGE ABOUT 25
S/O ASHOK KUMAR
R/O 2153/19, KAILASH COLONY, ITI GATE,
SONIPAT, HARYANA-131001
POST -PART TIME INSTRUCTOR
COLLEGE- ITI AKS NIZAMUDDIN
47. NISHA
AGE ABOUT 29 YEARS
D/O SHRI RAM
R/O HN: 28 B, BLOCK POCHANPUR
EXT DWARKA SECTOR 23
NEW DELHI -110077
POST -PART TIME INSTRUCTOR
COLLEGE- ITI SIRIFORT
48. AMIT KUMAR
AGE ABOUT 27 YEARS
S/O DHARAM VEER
R/O VILLAGE POST OFFICE CHOGAWAN,
TEHSIL -INDRI, DISTT KARNAL
HARYANA-132054
POST -PART TIME INSTRUCTOR
COLLEGE - ITI NARELA
49. ARUN KUMAR
AGE ABOUT 28 YARS
S/O VISHNU
R/O VILLAGE JANDHERI,
POST OFFICE KATHGARH, TEHSIL AND
DISTT-AMBALA HARYANA-134003
POST -PART TIME INSTRUCTOR
COLLEGE - ITI NARELA
50. RAVINDER
AGE ABOUT 31 YEARS
S/O CHANDER BHAN
R/O NEAR BHIMRAO AMBEDKAR BHAWAN,
DIKADLA, SAMALKHA DISTT- PANIPATH
HARYANA-132122
POST -PART TIME INSTRUCTOR
COLLEGE - ITI NARELA
51. SNEHA
AGE ABOUT 25 YEAR
D/O ARUN KR. GUPTA
R/O 151 STATE BANK COLONY,
GT KARNAL ROAD-97.
POST -PART TIME INSTRUCTOR
COLLEGE- ITI TILAK NAGAR



52. DHARMANDRA SINGH CHOUHAN
AGE ABOUT 31 YEARS
S/O SIDDHESHWAR NAGAR
R/O HN. 221 SIDDHESHWAR NAGAR
ITI JHANSI UP
POST -PART TIME INSTRUCTOR
COLLEGE- ITI SHAHDARA

53. MEENA
AGE ABOUT 33 YEARS
D/O AZAD SINGH
R/O BARODRA MORE,
NEAR ANAJ MANDI TEHSIL GOHANA
DISTRICT SONIPAT HARYANA-131304
POST -PART TIME INSTRUCTOR
COLLEGE- ITI SHAHDARA.

54. PINKI RANI
AGE ABOUT 29 YAERS
D/O MR. BHOORE SINGH
R/O VILLAGE + POST SIMBHAOLI DIST. HAPUR,
POST -PART TIME INSTRUCTOR
COLLEGE- ITI MANGOL PURI.

55. JYOTI
AGE ABOUT 27 YEARS,
D/O MR. VISHNU LAL
R/O VILLAGE BHURRI, DIST. SONIPAT,
POST -PART TIME INSTRUCTOR
COLLEGE- ITI MANGOL PURI.

... APPLICANTS

(BY ADVOCATE: MS.RASHMI CHOPRA WITH MS. ASIYA)

VERSUS

1. GOVT. OF NCT OF DELHI
THROUGH CHIEF SECRETARY,
DELHI SECRETARIAT, I.P. ESTATE
NEW DELHI-110002.

2. THE PRINCIPAL SECRETARY
DEPARTMENT OF TRAINING & TECHNICAL
EDUCATION, MUNI MAYA RAM MARG,
PITAM PURA, NEW DELHI-110034.

3. THE JOINT DIRECTOR
DEPARTMENT OF TRAINING & TECHNICAL
EDUCATION
MUNI MAYA RAM MARG,
PITAM PURA, NEW DELHI-110034.

... RESPONDENTS

(BY ADVOCATE: MR. AMIT ANAND)



ORDER

(Hon'ble Mr. S.N.Terdal, Member (J)):

We have heard Ms. Rashmi Chopra with Ms. Asiya, counsel for applicants and Mr. Amit Anand, counsel for respondents, perused the pleadings and all the documents produced by both the parties.

2. In this OA, the applicants have prayed for the following reliefs:

- “(a) To quash and set aside the impugned Advertisement dated 28.07.2017 read with 20.07.2019; and
- (b) To continue with the services of the Applicants in the respective posts without any further interview;
- (c) To direct the Respondents not to replace the service of the Applicants by any other sources except by way of regular appointment and allowing the Applicants to serve the Respondent Department till the regulars appointment on the posts.
- (d) To declare and hold the selection procedure as detailed in Advertisement dated 20.07.2019 and 28.07.2019 to be illegal and unfair as much as stipulates that candidates who are granted less than 7 marks shall be rejected;
- (e) To exempt those candidates from the qualifications of CTET/TET who have worked in previous academic sessions.
- (f) Accord all consequential benefits.
- (g) Award cost of the proceedings.
- (h). Pass any other order as deemed fit and proper in the Facts and circumstances of the case and allow cost in favour of the Applicant.”



3. The relevant facts of the case are that after the applicants having completed successfully all the required recruitment formalities, they were selected and engaged as Instructors/ Lecturers on part time hourly rate basis in the Government Industrial Training Institute (ITIs)/Basic Training Centre (BTC) /Institute of Basic Business Studies (IBBS) under the Government of NCT Delhi for the academic year 2017-18 after following the procedure on the basis of advertisement issued for the said purpose by the respondents. The advertisement/ notice issued in this regard is extracted below:-

NOTICE

"The applications are invited from the eligible candidates for engagement of Instructor/Lecturer on part time basis in the Government Industrial Training Institutes (ITIs)/Basic Training Centre (BTC)/Institute of Basic Business Studies (IBBS) under the aegis of DTTE, Government of NCT Delhi for the academic year 2017-18 upto 31st July 2018. The remuneration/honorarium will be payable as per the rates mentioned below:

Staff Category	Rate per Hour		Maximum monthly ceiling of honorarium.
	Theory classes	Practical Classes (adopting general guidelines)	
Craft Instructor/ Instructor Drawing/ Workshop Calculation & Science Instructor/ Lecturer IBBS	Rs.500/-	Rs.250/-	Rs.30,000/- (Rupees thirty thousand only) per month
In case of senior retired staff equivalent to Group Instructor or above, from DTTE/ Industry/Armed forces at attaining of 60 years of age.	Rs.800/-	Rs.400/-	

The interested candidates can download the prescribed application form and other terms & conditions, recruitment rules and policy of part time engagement from the website of DTTE i.e. www.tte.delhigovt.nic.in. Candidates shall submit duly filled and scanned copy of the application form through email dtterecruitment.trg@gmail.com latest by 03rd October 2017 up to 5.00 PM alongwith the one set of scanned copies of all the certificates of qualification and



experience etc. The candidates must retain the original application form and carry the same at the time of interview. The candidates are also advised to visit the website regularly as the schedule of interview shall be published only on website of department.

For any query, candidates can contact to the Administrative Officer (Training), Room No. 206, Department of Training & Technical Education, Muni Maya Ram Marg, Delhi."

4. On the basis of the above advertisement, on selection, the offer of engagement issued to one of the candidates is extracted below:

"Sub: Offer of engagement of Instructors on part time hourly basis for the Academic Session 2017-18 (Up to 31st July 2019).

The Competent Authority is pleased to offer engagement to the post of Instructor (Trade Fashion Design & Technology) on part time hourly basis for the academic session 2017-18 (up to 31st July 2018), for conducting theory and practical classes in the Govt. Industrial Training Institute/Basic Training Centre, Delhi/New Delhi on the following terms & conditions:-

1. The engagement will be **PURELY ON PART TIME HOURLY BASIS** for the **Session 2017-18** or as per the requirement/availability of trainees of the concerned trade in ITIs/BTC. This will not vest any right to claim for regular appointment in the department or for continued contractual appointment.
2. The remuneration to the instructors engaged on part time hourly basis will be as under and no chares other than this will be paid:

Rate per Hour		Maximum monthly ceiling of honorarium.
Theory Classes Rs.500/-	Practical Classes Rs.250/-	Rs.30,000/- (Rupees thirty thousand only) per month

3. The honorarium/remuneration will be directly linked to duties performed in accordance with No. of hours actually taught as per time table.

4. The Principal concerned can terminate the engagement at any time on the basis of unsatisfactory work, indiscipline or as per functional requirement without giving any notice during the engagement period.



5. The engaged Instructors shall adhere to the time table for conducting theory and practical classes.

6. The candidate has to deposit the **original academic & technical certificates** and certificates of SC/ST/OBC/PH etc. for complete session or till the termination of the engagement in the Institute as guarantee against **security of Tools, Equipments and Machinery issued to** him/her.

7. If any declaration/information furnished are found false or if any material fact suppressed willfully, the engagement will be terminated forthwith.

8. The final engagement order will be issued by Principal concerned only on the basis of functional requirement.

9. The candidate engaged **shall not be entitled to any benefits of Provident Fund, Pension, Gratuity, Medical Attendance & treatment, Govt. Residential Accommodation or H.R.A. in lieu thereof** or any other benefits and concessions admissible to Govt. servants.

10. This engagement will not confer any right or claim for regular appointment to the post and an undertaking will have to be furnished by the instructor engaged that no court cases will be filed during or after completion of the engagement period for seeking any regular appointment or full time contractual appointment.

11. The candidates have to give the following undertaking at the time of joining:

- (i) **The candidate will not engage during current academic session 2017-18 in any other** ITI/BTC under the Department of Training & Technical Education, GNCT of Delhi.
- (ii) The candidates will not have any claim on regular post and will not approach the Court for establishing the claim towards the regular post or full time contractual appointment.

12. The terms and conditions laid down may be amended at any time by the Department of Training & Technical Education, GNCT of Delhi, if required.

If the above terms and conditions are acceptable then you should submit the letter of acceptance to the Principal ITI/BTC SIRIFORT (W) on or before 23.03.18 between 10 A.M to 4.00 PM failing which the engagement will be treated as CANCELLED and no further communication will be entertained in this regard."

(emphasis supplied)



5. Subsequently for the academic year 2018-19, similar advertisement was given and following the similar selection procedure some of the applicants were again engaged on identical terms for the academic session 2018-19. For the subsequent academic year ending July 2020, the respondents issued impugned advertisement/notice dated 20.07.2019 and the impugned covering letter dated 19.07.2019, challenging which the present OA is filed seeking a direction to the respondents not to replace the service of the applicants by another set of part time engagements, except by way of regular appointment and also for allowing the applicants to serve the respondent-department until regular appointments are made to the said posts on the basis of the principles of law laid down by the Hon'ble Supreme Court in catena of cases right from 1992 in the case of **State of Haryana and Ors. Vs. Piara Singh and Ors**, reported in (1992) 4 SCC 118). The said impugned Annexure A-1 dated 19.07.2019 and Annexure A-2 dated 20.07.2019 are extracted below:-

"Annexure A-1 dated 19.07.2019

F.25/Trg.Admn/PTE/2019/PartFile/616 Dated 19/07/19

To

The Director,
Directorate of Information & Publicity,
Block No. 9, Old Secretariat,
Delhi.

Sub: Publishing of the advertisement for engagement of Craft Instructors on Part Time Basis in Govt. ITIs of Delhi.



Sir,

Please find enclosed herewith a copy of advertisement (in Hindi) and English) regarding engagement of Craft Instructors on Part Time basis in all Govt. it is, Delhi/New Delhi for publication in one Hindi and two English leading daily newspapers published from Delhi/New Delhi in display column as mentioned below on the earliest possible date:

1. Time of India (English)
2. Punjab Kesri(Hindi)
3. Hindustan Times (English)

The size of publication in newspapers should be MINIMUM.

The Cost Estimate of Advertisement is also attached for reference. This issue with the approval of Hon'ble Dy. C.M."

Annexure A-2

NOTICE

"The applications are invited from the eligible candidates for engagement of Instructor/Lecturer on part time basis in the Government Industrial Training Institutes (ITIs) under the aegis of DTTE, Government of NCT Delhi for period August 2019 to 31st July 2020. The remuneration/honorarium will be payable as per the rates mentioned below:

Staff Category	Rate per Hour		Maximum monthly ceiling of honorarium.
	Theory classes	Practical Classes (adopting general guidelines)	
Craft Instructor/ Instructor Drawing/ Workshop Calculation & Science Instructor	Rs.500/-	Rs.250/-	Rs.30,000/- (Rupees thirty thousand only) per month
In case of senior retired staff equivalent to Group Instructor or above, from DTTE/ Industry/ Armed forces at attaining of 60 years of age.	Rs.800/-	Rs.400/-	

The interested candidates can download the prescribed application form and other terms & conditions from the website of DTTE i.e. www.tte.delhigovt.nic.in. Applicants are advised to read carefully the guidelines before filling up the application form. Candidates shall submit duly filled application form offline, for the institute of his choice to the cluster, within 15 days from the date of advertisement, along with the one set of self attested copies of all the certificates of qualification and experience etc. Applications received after 15 days of advertisement will not be entertained. A candidate can apply for as many trades he/he wants to but in one cluster only. If a candidate applies in more than one cluster, his/her candidature will liable to be cancelled. The candidates are advised to keep in contact with cluster for the schedule of interview.

For any query, candidates can contact to the Principal Head of the cluster."



6. The respondents have filed counter affidavit. In the counter affidavit, the respondents have stated that the applicants are appointed only for academic session every time by issuing separate advertisements and that they have been appointed on part time hourly basis in different trades and that they have been making efforts to recruit regular basis through DSSSB but they are not able to fill up the posts and as the applicants are not appointed on full time contractual basis and that they are appointed only on part-time hourly basis maximum for 32 hours per week and as such they are free to work for other employer for rest of the time and, therefore, they cannot claim the benefit of the law laid down by the Hon'ble Supreme Court in catena of cases, including the case of above stated Piara Singh and Ors (supra) relied upon by the counsel for the applicants, as the law laid down by the Hon'ble Supreme Court in the above said case is applicable only to those engaged on full time contractual basis. The relevant averments made by the respondents in this regard are extracted below:

"The applicants in the present OA are working in the Department as **Part time Instructors on hourly** basis in various ITIs in different trades. The Department **continuously made efforts for a long period** of time to **recruit regular instructors through DSSSB but the posts could not be filled up.**

Therefore, the engagement of Part time instructor on hourly basis was started by the respondent in the academic **session** 2017-18 and again advertised for the required posts of Part time Instructor on hourly basis for the next session i.e. for 2018-19 subsequent to which new Part time Instructors were engaged in the academic year 2018-19.

Incidentally, during said process among new selected some of the previously engaged Part time Instructors were again selected.



As per rightful and legal preceding practice, in the interest of the training and functional requirement, for current session i.e. for 2019-2020 the respondent again advertised for engagement of the Part Time Instructor on hourly basis and subsequently started the process.

After initiation of said process, to stall the rightful and legal act of the respondent, the applicants filed an OA No. 2302/2019, titled Kavita & Ors Vs. GNCTD in the Hon'ble Tribunal.

To prove their point the applicants, in said OA relied on the concept that 'one set of contractual employee cannot be replaced by another set of contractual employee'. For making this concept applicable in their unjustified cause the applicants are trying to equate the post of **Part time Instructor on hourly basis** with post of Contractual Instructor on full time basis.

It is worth mentioning that the applicants are relied on wrong notion, as Part Time Instructor on hourly basis cannot be equated with the contractual Instructor on full time basis.

There is a difference in engagement on part time on hourly basis and engagement on contractual basis in later case the employee worked for full working hours for full contracted Academic Session whereas in former case the employee only work for limited hours with remuneration restricted to maximum Rs.30,000/- with very less responsibility, i.e. there is always a restriction of the number of hours to be put in.

There is also a difference in mode of calculation of remuneration on one hand the Part time hourly basis Instructor are getting remuneration on basis of hours they put in for work assigned and on other hand the Contractual Instructor on full time basis are getting consolidated sum which are defined by the Finance Department, GNCTD. Owing to said reason, unlike Contractual Instructor on full time basis, all the engaged Part time Instructors are not getting equal remuneration. This factor also shows that they both are not equal.

Part time Instructors on hourly basis are employed for less No. of hours in a month to meet the functional requirement of the respondent. The standing of part time Instructors on hourly basis are not same as the Contractual Instructors.

The Hon'ble Tribunal in a recent Order dated 28.06.2019 in Dr.Keshav Niranjana Vs. GNCTD observed as under:

"A perusal of the cited order of the Hon'ble High Court in WP (C) No. 6421/2017 reveals that the matter pertains to the appointment of an Assistant Professor on



ad-hoc basis. This is very different from a part time faculty **on hourly** basis since an ad-hoc appointment entails full time employment to the individual in question whereas **a part time** employee is free to work in many organizations and there is also restriction on the number of hours to be put in by a part time employee."

A copy of order dated 28.06.2019 passed by Hon'ble Tribunal in OA No. 1833/2019 in the matter of Dr. Keshav Niranjana Vs. Govt. of NCT of Delhi is annexed as Annexure R-1.

It is the applicants who have committed breach of trust by violating the accepted terms and conditions of the offer of engagement and undertaking given to the respondent at the time of engagement.

Some of the clauses to this effect are reproduced as under:

Clause 1. The engagement will be on PURELY ON PART TIME HOURLY BASIS for the Academic Session or as per the requirement/availability of trainees of the concerned trade in it is/BTC. This will not vest any right to claim for regular appointment in the department or for continued contractual appointment.

Clause 10. This engagement will not confer any right or claim for regular appointment to the post and an undertaking will have to be furnished by the appointee that no court cases will be filed during or after completion of the engagement period of seeking any regular appointment or full time contractual appointment."

In the undertaking among other terms and conditions the applicants explicitly undertake that they will not claim for continuation for the next academic year i.e. 2019-20. (Annexure R-2 (Colly)).

In view of foregoing facts it is evidenced that the Original Application is devoid of any merit and liable to be dismissed."

7. The counsel for the respondents further submitted that the above stated system of appointment of part time employees on hourly basis is based on the scheme of the Government based on



the policy of the Government issued vide Office Order no...../Acad./1038/PTI/2016-17/920 dated 23.06.2016 and as it is a policy matter, this Tribunal cannot adjudicate the legality or the correctness of the said scheme for appointment or the policy. The said policy and scheme are extracted below:

"OFFICE ORDER

Policy regarding hiring of part time faculty/non-teaching lab staff in Degree/Diploma level institutes (Expert Autonomous Bodies/Universities) under DTTE as per office order No. F.161/18 Pt.Time Faculty/DDTE/2014/3062-3072 dated 22/12/2015, as approved vide Cabinet decision no. 2260 dated 30.11.2015, has been expanded for engagement of the part time staff in all institutes, namely, Industrial Training Institutes, Institute of Basic Business Studies, Diploma Level and Degree Level Institutions, Societies like Delhi Institute of Tool Engineering, Society for Self Employment, Society for Skills Promotion in Delhi, etc. that are under the administrative control of Department of Training and Technical Education for full duration or short duration technical and training programmes as per the scheme mentioned below. The under-mentioned scheme is in addition to the approved policy for diploma/degree level teaching/non-teaching staff. However, in case of a society the same maybe adopted as per the norms prescribed under Memorandum of Association of the Society.

The Scheme

Identification, Calculation and Approval of Vacancies:-

Keeping in view the interest of the trainees, the Principals/Heads of the Institutes will compile the requirement at Institute's level for various non-teaching and teaching positions in relevant discipline/trade as per the roaster for the post of Craft Instructors and NCVT norms/Recruitment rules and will send the proposal to the Directorate for getting Administrative Approval of Director (TTE) for engagement of the desired number of faculty in their respective Institute. The Principal/Head of the Institutions will work out the expected number of vacant posts against the sanctioned strength well



before the start of new academic session so as to ensure initiation of engagement process well in time. One part time teacher will be engaged on the basis of need of the Institute up to a maximum assignment of two slots (16 hours each per week).”

8. In support of his contention the counsel for the respondents relied upon the judgment of Hon’ble Allahabad High Court in **Kirti Raje Singh Vs. The University of Allahabad and Others** (Writ A No.-42121 of 2010).

9. The counsel for the applicants, in reply, vehemently and strenuously submitted that though the applicants were engaged on part time basis and on hourly basis and they have been paid only Rs.30,000/- per month at the maximum as per the above extracted appointment letters, but actually they were engaged every day almost 7 to 9 hours as per the records maintained by the respective ITIs/BTC/IBBS in Biometric attendance sheet and she further submitted that as per the offer of engagement letters it is clearly stated **that the original documents of the applicants kept by the respondents until the completion** of session by way of security of tools, equipments and machinery issued to them as per conditions 6 of their appointment letter and they were further under the condition that they shall not engage themselves during the



“Heard on the MA 2650/2019

The respondents may go-ahead with the interviews, which are held in view of the impugned advertisement dated 19.7.2019. But, however, the result of the interview should be kept in sealed cover, which would be subject to outcome of this OA. The MA stands disposed of.

The said order dated 19.08.2019 was modified in view of the fact that the advertisement is for filling up of 200 vacancies vide order dated 22.11.2019 to the extent that only with respect to 53 posts the result shall not be declared by the respondents and with respect to other remaining posts, result could be declared, subject to the outcome of this OA. The said order is extracted below:

“MA 3082/2019

By way of the present application, the respondents in OA (Applicants in the MA) have prayed for vacation of the interim order dated 19.08.2019 passed by this Tribunal in the aforesaid OA. The relevant portion of the interim order dated 19.08.2019, sought to be vacated/modified reads as under:-

“The respondents may go-ahead with the interviews, which are held in view of the impugned advertisement dated 19.07.2019. But, however, the result of the interview should be kept in sealed cover, which would be subject to outcome of this OA. The MA stands disposed off.”

2. Learned counsel for the applicants in the MA, Sh. Amit Anand submit that vide impugned advertisement, **the respondents are in the process of filing up 200 posts for engagement** of Craft Instructors on Part Time basis in Government it is of Delhi whereas, in spite of the act that the impugned Advertisement has been issued in pursuance of a Cabinet decision of GNCTD and selection process is complete. However, results are kept in a sealed cover **and thus causing administrative hardships in running the various ITIs in Delhi**



inasmuch as the current academic session is going on and the same is likely to cause not only administrative hardships but may also prejudice to the students of those ITIs.

3. Per contra, Ms. Rashmi Chopra, learned counsel for the applicants in the OA (respondents in the MA) submits that the interim order was passed after hearing the parties and perusal of the relevant records. She submits that the applicants have been engaged by following due process of law and have been discharging their duties to the entire satisfaction of all concerned with no complaint of whatsoever nature and in the circumstances, the respondents are not expected to require the applicants to undergo a new selection process by way of test or interview etc. as it is settled position of law that one set of contractual employees cannot be replaced by another set of contractual employees.

4. However, in the facts and circumstances and in the interest of justice, the interim order date 19.08.2019 is modified to the extent that the respondents shall not declare the result of 53 posts, the posts against which the present applicants in the OA had been engaged without the leave of the Tribunal. Result of the candidates for remaining post(s) may be declared.

12. The counsel for the applicants further submitted in view of the facts and circumstances narrated above it may be held that the applicants are engaged on contract basis in ITI/BTC etc. and that the claim of the respondents that they are engaged on hourly part time basis shall be held as a new device of exploitation and not continuing them until the appointments are made to the posts by regular selection process as per Recruitment Rules (RRs) is against the law laid down by the Constitutional Bench of the Hon'ble Supreme Court in para 53 in **State of Karnataka Vs. Umadevi** (2006) 4 SCC 1) which has been repeated in **Sheo Narain Nagar**



arbitrarily. **The kind of treatment meted out is not only bad but equally unconstitutional and is denial of rights.** We have to strike a balance to really implement the ideology of Uma Devi (supra). Thus, the time has come to stop the situation where Uma Devi (supra) can be permitted to be flouted, whereas, **this Court has interdicted such employment way back in the year 2006. The employment cannot be on exploitative terms,** whereas Uma Devi (supra) laid down that there should not be back door entry and **every post should be filled by regular employment but a new** device has been adopted for making appointment on payment of **paltry system on contract/adhoc basis or otherwise.** This kind of action is **not permissible, when we consider the pith and substance of true spirit in Uma Devi (supra)."**

(Emphasis supplied)

13. Learned counsel for the applicants referring to para 25 of the judgment in Piara Singh and others case (supra), submitted that the Hon'ble Supreme Court right from 1992 has been directing the State being the model employer required to make regular appointments when vacancies are available and in case regular appointments as per RRs cannot be made then the ad hoc appointments or engagements, by whatever name or description, be made and when such ad hoc engagements are made, such engagements are to be continued until regular appointments are made. The said para 25 is extracted below:-

"25. Before parting with this case, we think it appropriate to say a few words concerning the issue of regularization of ad hoc/temporary employees in government service.



The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an ad hoc or temporary appointment to be made. In such a situation, effort should always be to replace such ad hoc/temporary employee by a regularly selected employee as early as possible. Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate. The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad hoc/temporary employee.

Secondly, an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee; he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority.

Thirdly, even where an ad hoc or temporary employment is necessitated on account of the exigencies of administration, he should ordinarily be drawn from the employment exchange unless it cannot brook delay in which case the pressing cause must be stated on the file. If no candidate is available or is not sponsored by the employment exchange, some appropriate method consistent with the requirements of Article 16 should be followed. In other words, there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly..."

(Emphasis supplied) "

In support of her contention, apart from above, the counsel for the applicants relied upon the law laid down in the following judgments/orders:

Supreme Court of India

"(i) **Mohd.Abdul Kadir and Anr. Vs. Director General of Police, Assam and Ors.** (2009) 6 SCC 611)

(ii) **Kamlesh Kumar Vyas And Anr. Vs. State of Rajasthan and Ors.** (Special Leave to Appeal C Nos. 13734/2015-decided on 15.09.2015



- (ii) **Commissioner KVS Vs. Anil Kumar Singh** (2003 (1) SCC 284)
- (iv) **Hargur Singh Vs. State of Punjab** (2007(13)SCC 292)

High Court of Delhi at New Delhi.

- (v) **Abhinav Chaudhary & Ors Vs. Delhi Technological University & Anr.** (W.P (C) Nos. 3512/2014 &3834/2014)
- (vi) **Narinder Singh Ahuja Vs. The Secretary, Ministry of Health and Family Welfare** (W.P (C) 1741/2014)
- (vii) **Sunita Kumar and Ors. Vs. Government of NCT of Delhi and Ors.** (W.P (C) No. 7203/2018)
- (viii) **Babita Rani & Ors. Vs. GNCTD** (124(2005)DLT 97).

Other State High Court

- (ix). **Surinder Singh and Ors. Vs. Union of India and Ors.** (CWP No.20514 of 2015).
- (x) **Ghan Shyam Gurjar Vs. State and Ors.** (S.B.Civil Writ Petition No. 3595/2012)
- (xi) **Pradeep Navinbhai Patel Vs. State of Gujarat** (2014 GLH (2) 501)
- (xii) **Pratikgiri Rameshgiri Goswami Vs. State of Gujarat and Ors** (Special Civil Application Nos. 12577 of 2015).

The Central Administrative Tribunal, Principal Bench, New Delhi.

- (xiii) **Santosh Kumar and Ors. Vs. Govt. of NCT of Delhi and Ors** (A 2069/2017)
- (xiv) **Srishti Shankar and Ors. Union of India and Ors.** (OA Nos. 3165/2015)
- (xv) **Sovinder and Ors Vs. Union of India and Ors.** (OA 3893/2014)
- (xvi) **Archana Saxena Vs. M/o Statistics** (OA No. 2275/2017)



- (xvii) **Akhila S Vs East Delhi Municipal Corporation** (EDMC) (OA 3668/2018)
- (xviii) **Srishi Shankar and Ors. Vs. Union of India and Ors** (OA 3165/2015)
- (xix) **Dev Raj Singh Vs. Govt. of NCT of Delhi** (OA 3972/2013)
- (xx) **Sonalika Misra and Ors. Vs. GNCTD and Ors** (OA 2671/2014)
- (xxi) **GNCTD and Ors. Sonalika Misra WP** (C) no.620/2015)
- (xxii) **Mrs.Praveen Khan and Ors Vs. Govt. of NCT of Delhi and Anr.** (OA 1184/2009)
- (xxiii) **Dr. Lok Raj and Ors. Vs. Chandigarh Administration and Ors.** (2008) 2 PLR 544) "

She particularly referred to para 8 of the judgment of Hon'ble Supreme Court in the case of **Mohd. Abdul Kadir and Anr.**(supra) in which the Hon'ble Supreme Court has held as follows:

"8. We may next consider the challenge to the procedure of annual termination and reappointment introduced by the circular dated 17.3.1995. The PIF Scheme and PIF Additional Scheme were introduced by Government of India. The scheme does not contemplate or require such periodical termination and re-appointment. Only ex-servicemen are eligible to be selected under the scheme and that too after undergoing regular selection process under the Scheme. They joined the scheme being under the impression that they will be continued as long as the PIF Additional Scheme was continued. **The artificial annual breaks and reappointments were introduced** by the state agency entrusted with the operation of the Scheme. This Court has **always frowned upon artificial breaks in service. When the ad-hoc appointment is under** a scheme and is in accordance with the selection process prescribed by the scheme, there **is no reason why those appointed** under the scheme should not be **continued as long as the**



scheme continues. Ad-hoc appointments under schemes are normally co-terminus with the scheme (subject of course to earlier termination either on medical or disciplinary grounds, or for unsatisfactory service or on attainment of normal age of retirement). Irrespective of the length of their ad hoc service or the scheme, they will not be entitled to regularization nor to the security of tenure and service benefits available to the regular employees. In this background, particularly in view of the continuing Scheme, the ex-serviceman employed after undergoing selection process, need not be subjected to the agony, anxiety, humiliation and vicissitudes of annual termination and re-engagement, merely because their appointment is termed as ad hoc appointments. We are therefore of the view that the learned Single Judge was justified in observing that the **process of termination and re-appointment every year should be avoided** and the appellants should be continued as long as the Scheme continues, but purely on ad hoc and temporary basis, co-terminus with the scheme. The circular dated 17.3.1995 directing **artificial breaks by** annual terminations followed by fresh appointment, being contrary to the PIF Additional Scheme and **contrary to the principles of service jurisprudence, is liable to be quashed.**"

She further referred to para 1 of the judgment in the case of **Kamlesh Kumar Vyas And Anr.** (supra) in which the Hon'ble Supreme Court has held:

"Learned counsel for the Respondents states that the Respondent-State shall not replace the Petitioners by any other contractual employees. In other words, services of the Petitioners may be discontinued if the State is of the opinion that there **is no further requirement for the engagement of contractual employees. It is further clarified that the services of the Petitioners shall be replaced only by undergoing the formalities required for regular employment.**"

Reference was further made to the following paragraphs of the judgment of Hon'ble Delhi High Court in the case of Abhinav Chaudhary & Ors (supra) in which the High Court has held as under:



"2. The only grievance of the petitioners is that a contractual appointee cannot be replaced by any other contractual appointee. Petitioners claim that no doubt petitioners cannot seek regularization, however, it is argued that one contractual employee cannot be replaced by another contractual employee on more or less the same terms. Reliance is placed upon the judgment of the Supreme Court in the case of State of Haryana and Ors. etc. etc. Vs. Piara Singh and Ors. etc. etc. (1992) 4 SCC 118 which holds that one work charged/casual employee/daily worker cannot be replaced by any worker of same category. It is argued that the ratio of the judgment of the Supreme Court in the case of Piara Singh and Ors. (supra) has been approved by the Supreme Court in the Constitution Bench judgment of the Supreme Court in the case of Secretary, State of Karnataka Vs. Umadevi & Ors. (2006) 4 SCC 1. The judgment in the case of Piara Singh and Ors. (supra) is referred to in paras 23 to 25 of the judgment in the case of Umadevi (supra). In para 26, the Constitution Bench in the case of Umadevi (supra) only disagreed with that direction of Piara Singh and Ors.'s case (supra) which requires regularization of ad hoc or temporary or casual employee. In para 25 of the judgment in the case of Umadevi (supra) para 46 of the Piara Singh and Ors.'s case (supra) is referred to and which para 46 states that an ad hoc or temporary employee should not be replaced by any other ad hoc or temporary employee and such an employee can only be replaced by a regularly selected employee and which is to avoid any arbitrary action on the part of the appointing authority.

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5. In view of the above, the case of the petitioners clearly falls within the ratios of the judgments of the Supreme Court in the cases of Piara Singh and Ors., Umadevi and Ors. and Mohd. Abdul Kadir and Anr. (all Supra) and **since one contractual employee cannot be replaced by other contractual employee, and which action will show gross arbitrariness** on the part of the respondent no.1, the present writ petition is allowed and respondents **are restrained from in any manner terminating the services of the** petitioners from the contractual posts of Assistant Professors at which they are working with the respondent no.1/employer. Of course, this will not disentitle the respondent no.1 to appoint any additional Assistant Professors with the respondent no.1 in accordance with its applicable rules or issue fresh advertisements having contractually substantially different terms than what the petitioners are presently working at."



She also referred to para 15 of the judgment of Hon'ble Delhi High Court in the case of Narinder Singh Ahuja (supra) in which the High Court has held as follows:

"15. In the opinion of this Court, since the respondents nowhere dispute that there is need for the performance of the work that the petitioners were discharging all along and there is also no dispute that the project and funding (for the project) would continue till 2017, the decision to discontinue the petitioners' engagement is based only on the policy to outsource the contractual employment to a third party. The petitioners are not insisting on regularization, given the nature of the employment or engagement, which is project based. **However apart from the decision to "outsource" engagement of contract employment to a third agency, there is no rationale to discontinue the petitioners' contracts.** The **justification that the employees** engaged through the contractor are **paid lower wages is arbitrary, because the "outsourced" or outsourcing agency** would have to be paid its **service charges**. The lower wages paid, therefore, is, in effect, because of the charges/fees paid to the contractor/outsourced agency. The facts of this case clearly reveal that even though the work is to be performed by contractual employees, the reason for discontinuance of the petitioners' employment is **not their replacement with regular appointees, but instead, with another set of contractual employees.** The state/respondents cannot, in the circumstances of this case, say that discontinuance of such employment cannot be gone into by the Court because the petitioners were aware that their contracts ended."

She further relied upon the judgment of Hon'ble Delhi High Court in the case of Sunita Kumari and Ors (supra) in which it has been held:

"16. Even otherwise, the settled law is that the contractual employees cannot be replaced by the other set of contractual employees. In the present case, the petitioners are working on honorarium as Anganwari workers and they continued. Therefore, I hereby declare that the petitioners are continued in the service of respondent no. 1 as Anganwari workers."



Further reliance was made to the order of the CAT (PB) in the case of Archana Saxena (supra) in which the Tribunal has held:

"9. In view of the above, the case of the applicant clearly falls within the ratios of the judgments of the Supreme Court in the cases of Piara Singh and Ors., Umadevi and Ors and Mohd. Abdul Kadir and Anr.(all supra) and since one contractual employee cannot be replaced by other contractual employee, and which action will show gross arbitrariness on the part of the respondents, the present OA is disposed of with a direction to the respondents, if the applicant's work is found to be satisfactory as per the aforesaid judgments of the Apex Court, her case should also be considered for continuation on contractual employment and the respondents will pass a reasoned and speaking order in this regard within a period of 90 days from the date of receipt of certified copy of this order. Till then, no coercive action shall be taken against the applicant. There shall be no order as to costs."

She also relied upon the order of this Tribunal in the case of Sonalika Misra (supra) in which it has been held:

"39. In view of the aforementioned it is held:

- (i). The applicants are not entitled to their regularization of the basis of the length of service rendered by them as Guest Teachers and their services can be brought to an end any time as well as they can always be substituted by the regular appointed teachers,
- (ii). The **Guest Teachers may not be substituted replaced by another set of Guest Teachers, unless their services are found unsatisfactory.**
- (iii). Such Guest Teachers whose services are found unsatisfactory can always be discontinued and their services can be even substituted by another Guest Teacher.
- (iv). Since in terms of the impugned Public Notice dated 28.7.2014 as well as circular dated 8.5.2014 (ibid) the candidates for appointment as Guest Teachers are exempted from CTET/TET, the



Guest Teachers, who worked during previous academic sessions, may not be substituted by another set of Guest Teachers on the ground that they have not passed the CTET/TET, as Guest Teachers. In such situation, such Guest Teachers, who have not passed CTET/ETE, can always be substituted by the freshers, who have passed CTET/TET.

- (v) The impugned Public Notice dated 28.7.2014 is in order and is not interfered with, except to the extent that instead of giving preference marks to Guest Teacher, the respondents would give preference to Guest Teachers, who worked during previous academic sessions, over the freshers in the matter of their continuance/reengagement.
- (vi) Only such of the applicants/Guest Teacher who will make representation to the respondents for their continuance /engagement as Guest Teacher mentioning the details of their previous service as Guest Teacher and the schools wherein they worked in such capacity within two weeks from the date of receipt of a copy of this order, would be entitled to consideration for their continuance /reengagement as Guest Teacher in preference to juniors and freshers."

She further relied upon the order of Full Bench of this Tribunal in the case of Mrs. Praveen Khan and Ors (supra) in which the Full Bench has held:

"3. The DB, which made the reference, however, referred the matter to a larger Bench for considering the issue regarding the replacement of a set of contractual employees by another set of contractual employees and correct interpretation of the judgment in Harminder Kaur (supra) in the light of Supreme Court's judgments on the same issue in some other cases to which we shall advert later in this order. In the above cited judgment of the Supreme Court the appellants before the Court were **teachers appointed on contract basis** by Chandigarh Administration. The appellants approached the Chandigarh Bench of this Tribunal for regularization of their services and challenging the right of the Administration to issue fresh advertisement for appointment of teachers. This Tribunal allowed the Application only to the extent that they **could not be replaced or substituted by another set of teachers appointed on contract basis**. This order of the



Tribunal was not challenged before any higher judicial forum. Another Original Application was filed by the teachers appointed on contract, seeking directions to Chandigarh Administration to frame a scheme for their regularization and to restrain the Administration to appoint regular teachers. The Tribunal dismissed this OA by observing that they had no right to be regularized in service and their appointment had to come to an end on their replacement by regularly selected teachers. The Writ Petition against this order was dismissed by the High Court. This order was challenged before the Supreme Court. It is in this conspectus that the Supreme Court held that the contract employees can be replaced by regularly appointed employees, while also noting the earlier order of this Tribunal in paragraph 3 of the judgment that contract employees may not be replaced or substituted by another set of employees appointed on contract basis. Clearly, the learned coordinate Bench of this Tribunal completely misread the judgment in Harminder Kaur to hold that the Honourable Supreme Court has observed therein that contract workers can be replaced by another set of contract workers.

4. The Supreme Court, while considering the issue regarding the regularization of ad hoc / temporary employees in Pira Singh Vs. State of Haryana, 1992 (4) SLR 770 held, inter alia, that Secondly, an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee; he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority.

While considering the case of termination of services of ad hoc doctors in the Railways in a batch of appeals including Dr.A.K.Jain & Ors Vs. Union of India and Ors., 1987 (Supp) SCC 497, the Supreme Court, inter alia, observed thus:

“No ad hoc Assistant Medical Officer/Assistant Divisional Medical Officer who may be working in the Railways shall be replaced by any newly appointed AMO/ADMO on ad hoc basis. Whenever there is need for the appointment of any AMO/ADMO on ad hoc basis in any zone the existing ad hoc AMO/ADMO who are likely to be replaced by regularly appointed candidates shall be given preference.”

Similar issue regarding regularization of contractual teacher under NDMC was considered by Delhi High Court in Dilip Kumar Jha & Ors. Vs. New Delhi Municipal Council in WP (C) numbers 16499 to 16502/2004, decided on 1.09.2006. The contractual teachers were seeking directions for their regularization. The High Court dismissed the petition with the following observations:



"6. Writ petitions are accordingly dismissed, subject to the direction that the respondent will not replace the petitioners with other contractual employees and in case by virtue of regular appointment the petitioners become surplus, the respondent will follow the rule of last come first"

5. The issue is thus well settled on the basis of judicial precedent cited above that a set of contractual employees shall not be replaced by another set of contractual employees except if the contractual employees are not working satisfactorily. The reference is thus answered. The judgment in Ruchi Singh (supra) is overruled to this extent. The Original Applications are remitted to the DB for further adjudication."

14. From the facts and circumstances of the case, it is clear that though the applicants were engaged as per the offer of appointment letters under the alleged scheme and policy referred to above, on part time hourly basis and though the respondents have submitted that the applicants can work in the remaining time after 32 hours per week anywhere else, but however, in view of the monthly biometric attendance sheet shown to us, it is clear that the applicants are actually working regularly for 7 to 9 hours a day and moreover as per paras 6 & 11 of the terms and condition of offer of appointment extracted above, their original certificates were kept with the respondents as such practically they are not allowed to work for any other employer, we are of the view that engagements of the applicants are nothing but a new device of engagement to deprive the applicants the status of contract engagement so as to deny them the benefit of even continuity of engagement, in accordance with the law laid down by the Hon'ble Supreme Court in catena of cases right from 1992 in the above said Piara Singh's case



(supra) and in Uma Devi's case (supra) which has been emphatically stated in the above extracted portion of the judgment in Sheo Narain case (supra), until regular appointments are made to the said posts and, therefore, the action of the respondents including the above extracted scheme and policy are against the principles of law laid down by the Hon'ble Supreme Court in the above referred cases and also against the principles underlying Article 14, 16 of the Constitution of India as stated in the above said case of Sheo Narain and are in contravention of the duty enjoined on the respondent- state under Article 37 read with Article 39 (d) and (e) of the Constitution of India and also in view of the experience gained by the applicants for having worked with the respondents from the academic year 2017-2018, the respondents are bound by the law laid down by the Hon'ble Supreme Court referred to and extracted above to continue the applicants until the respondents make regular appointments as per Recruitment Rules.



15 Accordingly the OA is partly allowed with a direction to the respondents to continue the engagement of applicants in the posts kept vacant in view of the interim order dated 22.11.2019 until the making of regular appointments as per Recruitment Rules. No order as to costs.

(A.K.Bishnoi)
Member (A)

(S.N.Terdal)
Member (J)

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