

**Court No. - 38**

**Case :-** WRIT - A No. - 6356 of 2020

**Petitioner :-** Prabhu Shanker And 6 Others

**Respondent :-** State Of U.P. And 3 Others

**Counsel for Petitioner :-** Durga Tiwari

**Counsel for Respondent :-** C.S.C., Arun Kumar

**Hon'ble Pankaj Bhatia, J.**

Supplementary affidavit filed today on behalf of learned counsel for the petitioners is taken on record.

The petitioners, who are seven in numbers, have filed present petition claiming that in furtherance of the constitutional goal as enshrined under Article 21A of the Constitution of India, the Central Government has framed an Act in the name of Right of Children to Free and Compulsory Education Act, 2009 (in short RTE Act). In furtherance of the said Act, the State Government issued Government Order dated 31.01.2013 sanctioning 41307 posts of part time instructors for imparting education i.e. Art Education, Health Education, Physical Education and Work Education. The State Government in pursuance of the said Government Order dated 31.01.2013 issued an advertisement inviting application for eligible candidates for appointment of instructors. The petitioners being eligible, applied for and were selected on the post of instructors for Computer Education/Physical Education and Art Education in the Institution, namely, Upper Primary School, Balua Block-Urua, District-Gorakhpur by the appointment order dated 01.07.2013.

It is stated that the Government Order dated 31.01.2013 provided that the instructors shall be appointed for eleven months subject to renewal in every academic session. The petitioners claim that their appointments were renewed from time to time every year and they continued without any break and were paid the prescribed honorarium up to May, 2019. It is also stated that respondent no.4 issued a renewal order in favour of other instructors, however no such renewal was issued in the case of the petitioners and such the petitioners submitted their representations before the respondent nos. 3 & 4. As the case of the petitioners was not being considered, the petitioners filed Civil Misc. Writ Petition No. 1076 of 2020 wherein the order dated 03.02.2020 was passed permitting the District Magistrate, Gorakhpur to take a decision in respect of renewal of the petitioners. On 27.02.2020, the District Magistrate, Gorakhpur rejected the request of the petitioners for renewal on the ground that in terms of RTE Act for every 100 students appointment of

instructors was prescribed, however as the number of students in the Institution, in question, had fallen below 100, there was no need for the instructors as such the request for renewal was rejected.

Submission of learned counsel for the petitioners is that the petitioners had continued since the year 2013 on contractual basis and their appointments were renewed from year to year. It is further informed that the petitioners were paid paltry honorarium of Rs.7,000/- per month, which was later revised to Rs.17,000/- by the Central Government but the petitioners were paid @ Rs.7,000/- per month till May, 2019.

Submission of learned counsel for the petitioners is that the appointment of the teachers @ Rs.7,000/- per month may be fulfilling the mandate of the Constitution under Article 21A but it clearly violates the mandate of Article 23 which prohibited exploitation. She argues that Rs.7,000/- does not even meet the minimum standard prescribed even for labourers and thus, keeping the teachers, who were qualified at Rs.7,000/- is nothing but an exploitation by the State.

Similar petition was filed before this Court by means of Writ - A No.49746 of 2017. This Court held that as term of appointment was only for eleven months, no right vests in favour of the appointees and thus no positive direction can be issued. The said order dated 27.11.2018 passed in Writ -A No.49746 of 2017 was challenged in Special Appeal Defective No. 414 of 2019 wherein the Appellate Court modified the order dated 27.11.2018 to the extent that it denies consideration for renewal of the services of the petitioners and further directed that the services of the candidates shall be considered for renewal in terms of clause-6 of the Government Order dated 31.01.2013.

Learned counsel for the petitioners has yet placed a judgment of this Court dated 3.7.2019 in Service Single No. 7631 of 2018 wherein this Court held that the guidelines as prescribed by the Central Government for payment of as Rs.17,000/- should be a guiding factor and the candidates should be paid honorarium @ Rs.17,000/- per month and thus balance was directed to be paid with interest.

It is informed at the bar that against the judgment dated 03.07.2019 Special Appeal is pending but has not been decided and no interim order has been passed.

The question raised by the petitioners that the renewal of the services continuously for more than eight years and non-

payment of minimum wages which are prescribed even for Class IV Post is exploitation by the State. This question was neither raised nor considered by this Court while passing the judgment dated 27.11.2018 in Writ- A No. 49746 of 2017.

The matter requires consideration.

The respondents shall file their counter affidavits within three weeks. Rejoinder affidavit may be filed within two weeks thereafter.

List thereafter.

As an interim measure, as there is no provision for non-renewal of appointed persons merely because the strength has fallen below 100, the operation and effect of the order dated 27.02.2020 is stayed and an interim mandamus is issued directing that the petitioners shall be permitted to continue as instructors in terms of Government Order dated 31.01.2013 till the pendency of writ petition and shall be paid their honorarium in terms of the Government Order. The question of exploitation by the State and quantum of honorarium to which the petitioners are entitled shall be considered on the next date.

**Order Date :- 8.9.2020**  
OP