

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA
ON THE 10th OF OCTOBER, 2023
WRIT PETITION No. 13130 of 2023**

BETWEEN:-

**DR. HARI SINGH GOUR VISHWAVIDYALAYA
(CENTRAL UNIVERSITY) THROUGH
REGISTRAR, SAGAR (MADHYA PRADESH)**

.....PETITIONER

***(SMT. SHOBHA MENON- SENIOR ADVOCATE WITH SHRI BHARAT DEEP
SINGH BEDI- ADVOCATE)***

AND

**VISHWAVIDYALAYA KAMGAR UNION
THROUGH ITS GENERAL SECRETARY SHIV
PRASAD RAIKWAR, R/O PADMAKAR SCHOOL
GATE, NAMAK MANDI, KATRA BAZAAR,
SAGAR, REPRESENTING DEEPAK DUBEY S/O
LATE SHRI BADRI PRASAD, AGED ABOUT 35
YEARS, R/O C/O SHRI DEVIDAS, 150, PHUTI
BAVDI, OPPOSITE JAIN MANDIR, TILAKGANJ,
SAGAR (MADHYA PRADESH)**

.....RESPONDENT

(BY SHRI UTTAM MAHESHWARI- ADVOCATE)

WRIT PETITION No. 12831 of 2023

BETWEEN:-

**DR. HARI SINGH GAUR VISHWAVIDYALAYA
(CENTRAL UNIVERSITY) THROUGH
REGISTRAR, SAGAR (MADHYA PRADESH)**

.....PETITIONER

(SMT. SHOBHA MENON- SENIOR ADVOCATE WITH SHRI BHARAT DEEP

SINGH BEDI- ADVOCATE)

AND

**VISHWAVIDYALAYA KAMGAR UNION
THROUGH ITS GENERAL SECRETARY, SHIV
PRASAD RAIKWAR, R/O PADMAKAR SCHOOL
GATE NAMAK MANDI KATRA BAZAAR SAGAR
REPRESENTING SANTOSH NAMDEO, AGED
ABOUT 39 YEARS, S/O SHRI AJEET NAMDEO,
R/O 138, VRINDAVAN WARD, AHMED NAGAR
ROAD, GOPALGANJ, SAGAR (MADHYA
PRADESH)**

.....RESPONDENT

(BY SHRI UTTAM MAHESHWARI- ADVOCATE)

WRIT PETITION No. 12872 of 2023

BETWEEN:-

**DR.HARI SINGH GAUR VISHWAVIDYALAYA
(CENTRAL UNIVERSITY) THROUGH
REGISTRAR, SAGAR (MADHYA PRADESH)**

.....PETITIONER

***(SMT. SHOBHA MENON- SENIOR ADVOCATE WITH SHRI BHARAT DEEP
SINGH BEDI- ADVOCATE)***

AND

**VISHWAVIDYALAYA KAMGAR UNION,
THROUGH ITS GENERAL SECRETARY, SHIV
PRASAD RAIKWAR, R/O PADMAKAR SCHOOL
GATE NAMAK MANDI KATRA BAZAAR SAGAR,
REPRESENTING ABHISHEK MISHRA, AGED
ABOUT 36 YEARS, S/O SHRI SHIVDARSHAN
MISHRA, R/O BAHUBALI COLONY, OPPOSITE
FUTI BAVRI, MOTINAGAR WARD, SAGAR
(MADHYA PRADESH)**

.....RESPONDENT

(BY SHRI UTTAM MAHESHWARI- ADVOCATE)

WRIT PETITION No. 12972 of 2023**BETWEEN:-**

**DR HARI SINGH GAUR VISHWAVIDYALAYA
(CENTRAL UNIVERSITY) THROUGH
REGISTRAR SAGAR (MADHYA PRADESH)**

.....PETITIONER

***(SMT. SHOBHA MENON- SENIOR ADVOCATE WITH SHRI BHARAT DEEP
SINGH BEDI- ADVOCATE)***

AND

**VISHWAVIDYALAYA KAMGAR UNION,
THROGUH ITS GENERAL SECRETARY SHIV
PRASAD RAKWAR, R/O PADMAKAR SHCOOL
GATE, NAMAK MANDI, KATRA BAZAAR,
SAGAR, REPRESENTING GAURAV SINGH
RAJPUT, AGED ABOUT 33 YEARS, S/O SHRI
SUMANT SINGH RAJPUT, R/O SHRIRAM
COLONY, UKTIDHAM ROAD, GOPALGANJ,
SAGAR (MADHYA PRADESH)**

.....RESPONDENT

(BY SHRI UTTAM MAHESHWARI- ADVOCATE)

WRIT PETITION No. 12986 of 2023**BETWEEN:-**

**DR.HARI SINGH GUAR VISHWAVIDYALAYA
(CENTRALUNIVERSITY), THROUGH
REGISTRAR, SAGAR (MADHYA PRADESH)**

.....PETITIONER

***(SMT. SHOBHA MENON- SENIOR ADVOCATE WITH SHRI BHARAT DEEP
SINGH BEDI- ADVOCATE)***

AND

VISHWAVIDYALAYA KAMGAR UNION,

THROUGH ITS GENERAL SECRETARY, SHIV PRASAD RAKWAR, R/O PADMAKAR SCHOOL GATE, NAMAK MANDI, KATRA BAZAAR, SAGAR, REPRESENTING VIVEK SEN, AGED ABOUT 36 YEARS, S/O LATE SHRI KRISHAN LAL SEN, R/O SATPAL SATH, SANICHARI TORI CHONGA, SAGAR (MADHYA PRADESH)

.....RESPONDENT

(BY SHRI UTTAM MAHESHWARI- ADVOCATE)

WRIT PETITION No. 13117 of 2023

BETWEEN:-

DR. HARI SINGH GAUR VISHWAVIDYALAYA (CENTRAL UNIVERSITY), THROUGH REGISTRAR, SAGAR (MADHYA PRADESH)

.....PETITIONER

(SMT. SHOBHA MENON- SENIOR ADVOCATE WITH SHRI BHARAT DEEP SINGH BEDI- ADVOCATE)

AND

1. VISHWAVIDYALAYA KAMGAR UNION, THROUGH ITS GENERAL SECRETARY, SHIV PRASAD RAIKWAR, R/O PADMAKAR SCHOOL GATE, NAMAK MANDI, KATRA BAZAAR, SAGAR REPRESENTING KU. PREETI RAJAK, AGED ABOUT 36 YEARS, D/O SHRI MADAN LAL RAJAK, R/O TOPKHANA BAZAR, CANTONMENT, SAGAR (MADHYA PRADESH)

.....RESPONDENT

(BY SHRI UTTAM MAHESHWARI- ADVOCATE)

WRIT PETITION No. 13198 of 2023

BETWEEN:-

**DR. HARI SINGH GAUR VISHWAVIDYALAYA
(CENTRAL UNIVERSITY) THROUGH
REGISTRAR, SAGAR (MADHYA PRADESH)**

.....PETITIONER

***(SMT. SHOBHA MENON- SENIOR ADVOCATE WITH SHRI BHARAT DEEP
SINGH BEDI- ADVOCATE)***

AND

**VISHWAVIDYALAYA KAMGAR UNION,
THROUGH ITS GENERAL SECRETARY SHIV
PRASAD RAIKWAR, R/O PADMAKAR SCHOOL
GATE NAMAK MANDI KATRA BAZAAR SAGAR,
REPRESENTING CHANDRAMANI SINGH, AGED
ABOUT 45 YEARS, S/O SHRI P.S. RAJPOOT, R/O
NEHA NAGAR MAKRONIYA, SAGAR (MADHYA
PRADESH)**

.....RESPONDENT

(BY SHRI UTTAM MAHESHWARI- ADVOCATE)

WRIT PETITION No. 13255 of 2023

BETWEEN:-

**DR. HARI SINGH GAUR VISHWAVIDYALAYA
(CENTRAL UNIVERSITY), THOUGH
REGISTRAR SAGAR (MADHYA PRADESH)**

.....PETITIONER

***(SMT. SHOBHA MENON- SENIOR ADVOCATE WITH SHRI BHARAT DEEP
SINGH BEDI- ADVOCATE)***

AND

**VISHWAVIDYALYA KAMGAR UNINON,
THROUGH ITS GENERAL SECRETARY SHIV
PRASAD RAIKWAR, R/O PADMAKAR SCHOOL
GATE, NAMAK MANDI, KATRA BAZAAR,
SAGAR, REPRESENTING RAVI PATEL, AGED
ABOUT 32 YEARS, S/O SHRI MUNNALAL PATEL,**

**R/O BHAGRAJ WARD, PANDPURA SAGAR
(MADHYA PRADESH)**

.....RESPONDENT

(BY SHRI UTTAM MAHESHWARI- ADVOCATE)

WRIT PETITION No. 13260 of 2023

BETWEEN:-

**DR. HARI SINGH GAUR VISHWAVIDYALAYA
(CENTRAL UNIVERSITY), THROUGH
REGISTRAR, SAGAR (MADHYA PRADESH)**

.....PETITIONER

**(SMT. SHOBHA MENON- SENIOR ADVOCATE WITH SHRI BHARAT DEEP
SINGH BEDI- ADVOCATE)**

AND

**VISHWAVIDYALAYA KAMGAR UNION,
THROUGH ITS GENERAL SECRETARY, SHIV
PRASAD RAIKWAR, PADMAKER SCHOOL
GATE, NAMAK MANDI, KATRA BAZAAR, SAGAR
REPRESENTING AMIT SAHU, AGED ABOUT 35
YEARS, S/O SHRI VRINDAVAN SAHU, R/O 34
MOHAN NAGAR WARD, OPPOSITE MARAI
MATA MANDIR, BADA BAZAR, SAGAR
(MADHYA PRADESH)**

.....RESPONDENT

(BY SHRI UTTAM MAHESHWARI- ADVOCATE)

WRIT PETITION No. 13299 of 2023

BETWEEN:-

**DR. HARI SINGH GOUR ISHWAVIYALAYA
(CENTRAL UNIVVERSITY) THROUGH
REGISTRAR SAGAR (MADHYA PRADESH)**

.....PETITIONER

***(SMT. SHOBHA MENON- SENIOR ADVOCATE WITH SHRI BHARAT DEEP
SINGH BEDI- ADVOCATE)***

AND

**VISHWAVIDYALAYA KAMGAR UNION,
THROUGH ITS GENERAL SECRETARY, SHIV
PRASAD RAIKWAR, R/O PADMAKER SCHOOL
GATE, NAMAK MANDI, KATRA BAZAAR,
SAGAR REPRESENTING, SANDEEP TIWARI,
AGED ABOUT 41 YEARS, S/O SHRI DINANATH
TIWARI, R/O BARIYAGHAT WARD, KALI
TIGADDA, PURVAYU TOURI, SAGAR (MADHYA
PRADESH)**

.....RESPONDENT

(BY SHRI UTTAM MAHESHWARI- ADVOCATE)

WRIT PETITION No. 14235 of 2023**BETWEEN:-**

**DR. HARI SINGH GAUR VISHWAVIDYALAYA
(CENTRAL UNIVERSITY) THROUGH
REGISTRAR, SAGAR (MADHYA PRADESH)**

.....PETITIONER

***(SMT. SHOBHA MENON- SENIOR ADVOCATE WITH SHRI BHARAT DEEP
SINGH BEDI- ADVOCATE)***

AND

**VISHWAVIDYALAYA KAMGAR UNION,
THROUGH ITS GENERAL SECRETARY, SHIV
PRASAD RAIKWAR, R/O PPADMAKAR SCHOOL
GATE, NAMAK MANDI, KATRA BAZAAR,
SAGAR, REPRESENTING DHARMENDRA
RAJAK, AGED ABOUT 46 YEARS, S/O LATE
SHRI PHOOLCHAND RAJAK, R/O LAXMIPURA,
SUBEDAR WARD, SAGAR (MADHYA PRADESH)**

.....RESPONDENT

(BY SHRI UTTAM MAHESHWARI- ADVOCATE)

WRIT PETITION No. 14236 of 2023

BETWEEN:-

**DR. HARI SINGH GAUR VISHWAVIDYALAYA
(CENTRAL UNIVERSITY), THROUGH
REGISTRAR, SAGAR (MADHYA PRADESH)**

.....PETITIONER

*(SMT. SHOBHA MENON- SENIOR ADVOCATE WITH SHRI BHARAT DEEP
SINGH BEDI- ADVOCATE)*

AND

**VISHWAVIDYALAYA KAMGAR UNION,
THROUGH ITS GENERAL SECRETARY, SHIV
PRASAD RAIKWAR, R/O PADMAKAR SCHOOL
GATE, NAMAK MANDI, KATRA BAZAAR,
SAGAR, REPRESENTING AJAY KANOJIYA,
AGED ABOUT 45 YEARS, S/O SHRI MUNNA LAL
KANOJIYA, R/O OPPOSITE HEAD OFFICE,
BUNGLOW 21, SAGAR (MADHYA PRADESH)**

.....RESPONDENT

(BY SHRI UTTAM MAHESHWARI- ADVOCATE)

WRIT PETITION No. 15990 of 2023

BETWEEN:-

**DR HARI SINGH GAUR VISHWAVIDYALAYA
(CENTRAL UNIVERSITY) THROUGH
REGISTRAR SAGAR (MADHYA PRADESH)**

.....PETITIONER

*(SMT. SHOBHA MENON- SENIOR ADVOCATE WITH SHRI BHARAT DEEP
SINGH BEDI- ADVOCATE)*

AND

**VISHWAVIDYALAYA KAMGAR UNION,
THROUGH ITS PRESEDENT SHRI SANDEEP
BALMIKI, R/O BEHIND CHAMELI SCHOOL,
RAVI SHANKER WARD, SAGAR MP 470002,
REPRESENTING AMIT NAHARIYA, AGED
ABOUT 42 YEARS, S/O SHRI PRATAP SINGH
THAKUR, R/O GRAM PACHPIPRA POST
SEHORA, TEHSIL RAHATGARH, DISTRICT
SAGAR (MADHYA PRADESH)**

.....RESPONDENT

(BY SHRI UTTAM MAHESHWARI- ADVOCATE)

*This petition coming on for admission this day, the court passed the
following:*

ORDER

By this common order, W.P. Nos. 12831/2023, 12872/2023, 12972/2023, 12986/2023, 13117/2023, 13198/2023, 13255/2023, 13260/2023, 13299/2023, 14235/2023, 14236/2023 and 15990/2023 shall be considered and decided.

2. For the sake of clarity the details of the orders which are under challenge in different writ petitions are as under:-

Sr. No.	Writ Petition No.	Date of Award	Case No.
1.	12831/2023	9.11.2022	CGIT/LC/A/7/2019
2.	12872/2023	9.11.2022	CGIT/LC/A/13/2019
3.	12972/2023	9.11.2022	CGIT/LC/A/6/2019
4.	12986/2023	9.11.2022	CGIT/LC/A/15/2019
5.	13117/2023	9.11.2022	CGIT/LC/A/14/2019
6.	13130/2023	9.11.2022	CGIT/LC/A/1/2019

7.	13198/2023	9.11.2022	CGIT/LC/A/5/2019
8.	13255/2023	9.11.2022	CGIT/LC/A/18/2019
9.	13260/2023	9.11.2022	CGIT/LC/A/12/2019
10.	13299/2023	9.11.2022	CGIT/LC/A/4/2019
11.	14235/2023	9.11.2022	CGIT/LC/A/19/2019
12.	14236/2023	9.11.2022	CGIT/LC/A/8/2019
13.	15990/2023	9.11.2022	CGIT/LC/A/10/2019

3. For the sake of convenience, the facts of W.P. 13130/2023 shall be considered.

4. It is the case of the petitioner that prior to 15.01.2009, the petitioner was the State University under the Vishwavidhyalala Adhiniyam, 1973. Subsequently, with the passing of Central Universities Act, 2009, petitioner became Central University. The petitioner framed recruitments rules for non-teaching employees, namely Recruitment Rules (Non-Teaching Employees) 2011 (in short 'Rules 2011') which came into force w.e.f. 24.09.2011 vide notification dated 27.04.2012/15.05.2012. After the enforcement of Rules, 2011, all the appointments in the University were too made in terms of provisions contained in the said rules. Along with the said Rules, summary of posts were classified and in the said setup there is no post sanctioned with the nomenclature of "Computer Operator". The respondent-Workman was engaged with the University, in view of exigency of work on contract basis as Computer Operator at Collector's rate w.e.f.11.02.2014, for a period of 89 days and after lapse of said period the term of contract was extended from time to time. However, workman was not issued any appointment order and was appointed on outsourcing basis directly through the Head of the Department concerned. While engaging

respondent/Workman the procedure contemplated in Rules, 2011 were not followed. Neither any prior advertisement was issued in compliance of constitutional scheme as mandated under Article 14 and 16 of Constitution of India.

5. The Workman with an open eye accepted that he has been engaged on the basis of outsourcing. Thereafter on 20.09.2017, the University, instructed all the HODs of its departments that the term of services of person employed on outsourcing basis be not extended beyond 29.08.2017 and no proposal be placed for extension of tenure of such employees. Thereafter, it was found by University that order dated 20.09.2017 was not complied with in its letter and spirit by some of its departments, therefore, again by communication dated 25.10.2017 reiterated not to continue with the employees who were engaged on outsourcing basis, in view of the fact that the University had already entered into an agreement with the agency to supply manpower. Thereafter, on 25.10.2017, the services of the petitioner were dispensed with.

6. The President of Vishwavidhyalaya Kamgar Union raised industrial dispute with Ministry of Labour and Employment vide complaint dated 11.10.2017. In pursuance thereof, the Assistant Labour Commissioner vide notice dated 17.10.2017 called upon petitioner to participate in conciliation proceeding on 07.11.2017. After the failure of conciliation proceedings, the Workman preferred application for registration of Industrial Dispute, as also, for making reference to the appropriate Government for adjudication. The Central Government vide its order dated 13.11.2018 in terms of its enabling powers conferred under Clause (d) of Sub-Section (1) and Sub-Section (2A) of Section 10 of Industrial Disputes Act, referred the dispute to CGIT in the following

terms:-

“Whether the employer/Registrar Dr. Hari Singh Gour University (Central University) acted illegally in not classifying Deepak Dubey as permanent, on the post of Computer Operator, Assistant Grade-III, after being appointed w.e.f.11.02.2014, as also, in not providing actual pay scale for the post concerned and whether action of the university in dispensing the services of Deepak Dubey vide 25.10.2017 is lawful?”

7. Respondent No. 1 preferred Statement of Claim before CGIT claiming benefit of permanent status on the post of Computer Operator, as also, respective pay scale and also prayed for setting aside retrenchment order dated 25.10.2017 and also claimed reinstatement with back wages. At the time of filing of the present petition, the said Industrial Dispute was pending for its final adjudication. However, it is not out of place to mention here that subsequently the said dispute was decided in favour of the Workman and writ petition challenging the said decision are also listed along with these writ petitions for analogous hearing.

8. It is the case of the petitioner that being aggrieved by disengagement of Workman, he preferred an application for breach of provisions contained in Section 33 of Industrial Disputes Act and the said application was registered as Case No. A/1/2019. The genesis of moving the said application was the wrongful projection of facts by respondents that after service of notice dated 17.10.2017 by Assistant Labour Commissioner, the services of the Workman were disengaged w.e.f. 25.10.2017, thereby, alleged violation of Section 33(1)(a) of I.D.

Act was claimed. However, it is the case of the petitioner that a decision was already taken by the University to disengage the services of outsourced Workman w.e.f. 29.08.2017 i.e. much prior to approach of Union to the Assistant Labour Commissioner. It is the submission of counsel for petitioner that the actual termination order dated 25.10.2017 is based on a decision taken by the University on 20.08.2017 and there was no violation of provisions of Section 33 of Industrial Disputes Act. Accordingly, a suitable reply was filed by the petitioner denying the breach of Section 33 of Industrial Disputes Act. However, it is fairly conceded by counsel for petitioner that thereafter the petitioner did not show any interest in the matter and ultimately was proceeded ex-parte.

9. The contention of counsel for petitioner is that admittedly the respondent-Workman was a daily wager employee and daily wager or contractual employees does not have any service conditions under the service jurisprudence and when there is no service conditions of such employees, then there is no question of breach of Section 33(1)(a) of I.D. Act. The respondent is not covered by the definition of Workman. The CGIT has given an incorrect finding that the conditions of service of respondent-Workman were changed during the pendency of dispute.

10. *Per contra*, the petition is vehemently opposed by counsel for the respondent-Workman. It is submitted that since a dispute was raised by the Union by approaching the Assistant Labour Commissioner, under Section 10 of Industrial Disputes Act, therefore, the disengagement on the respondent/Workman by order dated 25.10.2017 is bad-in-law and is violative of Section 33 of Industrial Disputes Act and thus, the CGIT did not commit any mistake by holding that the provisions of Section 33 of Industrial Disputes Act have been violated by the University.

11. Heard learned counsel for the parties.

12. The first question for consideration is as to whether any proceeding was pending on the date when actual order of disengagement dated 25.10.2017 was issued or not?

13. Whether a daily wager has any service condition or not?

14. In order to adjudicate the aforesaid controversy, the following dates are relevant:-

(i) On 20.09.2017, a decision was taken by the University to not to extend the services of the employees employed on outsources basis beyond 29.08.2017. Thus, a policy decision was taken on 20.09.2017.

(ii) In the light of decision taken on 20.09.2017, the Union approached the Assistant Labour Commissioner on 11.10.2017 raising dispute.

(iii) Notices of said dispute was received by petitioner-University on 17.10.2017

(iv) Since, all the departments of the University did not comply the said decision in its letter and sprite, therefore, another letter dated 25.10.2017 was issued pointing out the decision taken by the University on 20.09.2017.

(v) Accordingly, by order dated 25.10.2017, the services of the petitioner were disengaged.

15. Therefore, the dates i.e. 20.09.2017, 11.10.2017, 17.10.2017 and 25.10.2017 are important dates.

16. Letters dated 20.09.2017 and 25.10.2017 which have been filed as Annexure-P/3 and P/4 are reproduced as under-

डॉ. हरीसिंह गौर विश्वविद्यालय, सागर (म.प्र.)
(केन्द्रीय विश्वविद्यालय)

Dr. HARI SINGH GOUR VISHWAVIDYALAYA, SAGAR (M.P.)
(A Central University)

क्र./स्था./आउट सोर्स/2017/3371 दिनांक 20.9.2017

प्रति,

समस्त विभागाध्यक्ष,
समस्त अधिकारी/प्रभारी,
समस्त शाखा प्रभारी,
डॉ. हरीसिंह गौर विश्वविद्यालय
सागर (म.प्र.)

विषय: आउट सोर्स पर कार्य संपादित करने वाले कर्मियों के सेवाकाल में वृद्धि के संबंध में।

महोदय,

विषयान्तर्गत सूचित करना है कि आपके विभाग/शाखा में यदि आउट सोर्स पर किसी कर्मी से कार्य लिया जा रहा है, तो उससे दिनांक 29.8.2017 तक कार्य लिया जा सकता है। उक्त दिनांक के पश्चात् संबंधित कर्मी के सेवाकाल में वृद्धि किये जाने हेतु किसी प्रकार की अनुशंसा न करें।

आदेशानुसार

कुलसचिव

डॉ. हरीसिंह गौर विश्वविद्यालय, सागर

प्रतिलिपि :

1. कुलपति जी के सचिव
2. कुलसचिव के निजी सहायक
3. संबंधित नस्ती

उप कुलसचिव (स्था)

डॉ. हरीसिंह गौर विश्वविद्यालय, सागर (म.प्र.)
(केन्द्रीय विश्वविद्यालय)

Dr. HARI SINGH GOUR VISHWAVIDYALAYA, SAGAR (M.P.)
(A Central University)

क्र./स्था./आउट सोर्स/2017/3448 दिनांक 25.10.2017

प्रति,

समस्त विभागाध्यक्ष,
समस्त अधिकारी/प्रभारी,
समस्त शाखा प्रभारी,
डॉ. हरीसिंह गौर विश्वविद्यालय, सागर

विषय: वर्तमान में आउट सोर्स पर कार्य संपादित करने वाले कर्मियों से कार्य न लिये जाने बाबत।

संदर्भ: पत्र क्रमांक/स्था./आउट सोर्स/2017/3371, दिनांक 20.9.2017

महोदय,

संदर्भित पत्र द्वारा आपको सूचित किया गया था कि यदि आपके विभाग/शाखा में किसी आउट सोर्स कर्मी से कार्य लिया जा रहा है, तो उससे दिनांक 29.8.2017 तक कार्य लिया जा सकता है। उक्त दिनांक के पश्चात् संबंधित कर्मी के सेवाकाल में वृद्धि किये जाने हेतु किसी प्रकार की अनुशंसा न करें। उक्त पत्र जारी होने के पश्चात् भी यह देखा गया है कि वर्तमान में भी आउट सोर्स कर्मियों से कार्य

लिया जा रहा है।

इस संबंध में अवगत कराना है कि नियमानुसार एजेंसी के माध्यम से विश्वविद्यालय में मैन पावर उपलब्ध कराये जाने हेतु एजेंसी से अनुबंध हो चुका है, तथा संबंधित एजेंसी को कार्यादेश (वर्क आर्डर) भी जारी हो चुका है, जिस पर त्वरित कार्यवाही की जा रही है। अतः आपके द्वारा वर्तमान में जिस आउट सोर्स कर्मी से कार्य लिया जा रहा है, उससे तत्काल प्रभाव से कार्य न लिया जावे। यदि इसके पश्चात् भी आपके द्वारा किसी भी आउट सोर्स कर्मी से कार्य लिया जाता है तो उसके वेतन भुगतान संबंधी तथा अन्य वैधानिक समस्या उत्पन्न होने के लिये आप स्वयं उत्तरदायी होंगे।

आदेशानुसार

कुलसचिव

डॉ. हरीसिंह गौर विश्वविद्यालय, सागर

प्रतिलिपि :

1. कुलपति जी के सचिव
2. कुलसचिव के निजी सहायक
3. संबंधित नस्ती

संयुक्त कुलसचिव (स्था)

17. From plain reading of letter dated 25.10.2017, it is clear that it was specifically mentioned and reminded to all the HODs of different departments that by letter dated 20.09.2017, they have already been informed that period of contract of outsourced employees should not be extended beyond 29.08.2017 but it is being observed that still work is being taken from outsourced contractual employees. It was also mentioned that since an agreement has already been entered into with an agency to provide manpower and work order has also been issued, therefore, all the Head of Departments were directed not to take work from outsourced employees with immediate effect. Thus, order dated 25.10.2017 was nothing but it was an execution of order dated 20.09.2017.

18. Undisputedly, no proceedings were pending before any authority on 20.09.2017 and in fact the Union approached the Assistant Labour Commissioner on 11.10.2017 and notice of which was received by the

University on 17.10.2017. Since, nothing was pending on 20.09.2017, therefore, compliance of the said order on 25.10.2017 cannot be said to be a change in the service conditions of daily wager contractual employees.

19. Furthermore, the next question for consideration is as to whether the respondent/Workman who was working on daily wagers had any service condition or not?

20. A Full Bench in the case of **Ashok Tiwari Vs. M.P. Text Book Corporations and Another**, reported in **2010 (2) MPLJ 662** has held that a daily rated employee is not appointed to any post and before he is appointed, the pre-conditions contemplated for appointment to the post are not followed. His appointment is on a day-to-day basis as per need of work and normally the conditions of service regarding transfer, suspension, disciplinary action cannot be applied to such an employee.

21. Since, daily wagers are employed on day to day basis as per the need of work, therefore, they do not have any conditions of service. As already pointed out the decision to disengage the outsourced employees who were appointed on daily wages was already taken on 20.09.2017 and it was communicated by letter dated 20.09.2017 to all the concern HODs. Only, thereafter, Union approached the Assistant Labour Commissioner under Section 10 of Industrial Disputes Act on 11.10.2017 and notice was received by the University on 17.10.2017. Therefore, it is clear that the decision to disengage the outsource employee was taken i.e. 20.09.2017 when no proceeding was pending.

22. A Co-ordinate Bench of this Court in the case of **Motilal @ Munna Sen Vs. Brigadier, Mahar Regiment Centre and another**, reported in **2018 (3) MPLJ 606** has held that when workman-employee was allegedly discontinued, when no industrial dispute was pending

before conciliation officer or before Tribunal then discontinuation of employee cannot be termed in violation of 33 of Industrial Dispute Act and no complaint under Section 33-A of Industrial Dispute Act is maintainable.

23. The Supreme Court in the case of **The Bhavnagar Municipality Vs. Alibhai Karimbhai and Ors.**, decided on 08.02.1997 in **Civil Appeal No. 900/1976** has held that in order to attract Section 33(1)(a) of I.D. Act, the following features must be present:-

(1) There is a proceeding in respect of an industrial dispute pending before the Tribunal.

(2) Conditions of service of the workmen applicable immediately before the commencement of the Tribunal proceeding are altered.

(3) The alteration of the conditions of service is in regard to a matter connected with the pending industrial dispute.

(4) The workmen whose conditions of service are altered are concerned in the pending industrial dispute.

(5) The alteration of the conditions of service is to the prejudice of the workmen.

24. If the facts and circumstances of the present case are considered in the light of the judgment passed by Supreme Court in the case of **The Bhavnagar Municipality (supra)** it is clear that no proceeding was pending on 20.09.2017, when a decision was pending to dispense with the services of outsource employees.

25. The order dated 25.10.2017 is only a consequential order directing the compliance of order dated 20.09.2017 and in fact only because of decision taken by the University on 20.09.2017 the Union approached

the Assistant Labour Commissioner under Section 10 of Industrial Disputes Act on 11.10.2017. Thus it is held that on 20.09.2017, no proceedings whatsoever was pending either before the authority or before the Tribunal. The order dated 25.10.2017 is merely a consequential order issued in the light of directions dated 20.09.2017 and in absence of service conditions of daily wager employees, this Court is of the considered opinion that the CGIT committed a material illegality by holding that the Management is responsible for altering the service conditions of the employees/Workman by disengaging them by order dated 25.10.2017.

26. Accordingly, all the orders issued by CGIT in case Nos. CGIT/LC/A/7/2019, CGIT/LC/A/13/2019, CGIT/LC/A/6/2019, CGIT/LC/A/15/2019, CGIT/LC/A/14/2019, CGIT/LC/A/1/2019, CGIT/LC/A/5/2019, CGIT/LC/A/18/2019, CGIT/LC/A/12/2019, CGIT/LC/A/4/2019, CGIT/LC/A/19/2019, CGIT/LC/A/8/2019, CGIT/LC/A/10/2019 are hereby **quashed**.

27. As a consequence thereof, W.P. Nos 12831/2023, 12872/2023, 12972/2023, 12986/2023, 13117/2023, 13198/2023, 13255/2023, 13260/2023, 13299/2023, 14235/2023, 14236/2023 and 15990/2023 are hereby **allowed**.

(G.S. AHLUWALIA)
JUDGE

ashish