

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 3056 of 2009

1. Kamladevi Sangeet Mahavidyalaya through the Principal, Kamladevi Sangeet Mahavidyalaya, Rang Mandir, Gandhi Chowk, Raipur, Chhattisgarh.
2. Chairman, Governing Body, Kamladevi Sangeet Mahavidyalaya, Rang Mandir, Gandhi Chowk, Raipur, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh, Through the Secretary, Department of Higher Education, DKS Bhawan, Raipur (Chhattisgarh)
2. Indira Kala Sangeet University through its Registrar, Indira Kala Sangeet University, Khairagarh, Chhattisgarh
3. Smt. Chandana Sen, wife of Shri Kalyan Sen, aged about 48 years, Chota para Gandhi Chowk, Raipur

---- Respondents

WPS No. 3057 Of 2009

1. Kamladevi Sangeet Mahavidyalaya through the Principal, Kamladevi Sangeet Mahavidyalaya, Rang Mandir, Gandhi Chowk, Raipur, Chhattisgarh.
2. Chairman, Governing Body, Kamladevi Sangeet Mahavidyalaya, Rang Mandir, Gandhi Chowk, Raipur, Chhattisgarh

---- Petitioner

Vs

1. State Of Chhattisgarh, Through the Secretary, Department of Higher Education, DKS Bhawan, Raipur (Chhattisgarh)
2. Indira Kala Sangeet University through its Registrar, Indira Kala Sangeet University, Khairagarh, Chhattisgarh
3. Smt. Illa Mukherjee, wife of Shri Suneet Kumar Mukherjee, aged about 55 years, resident of B-18 in Shivam Vihar, Amlidih, Raipur, Chhattisgarh

---- Respondents

And

WPS No. 3058 Of 2009

1. Kamladevi Sangeet Mahavidyalaya through the Principal, Kamladevi Sangeet Mahavidyalaya, Rang Mandir, Gandhi Chowk, Raipur, Chhattisgarh.
2. Chairman, Governing Body, Kamladevi Sangeet Mahavidyalaya, Rang Mandir, Gandhi Chowk, Raipur, Chhattisgarh

---- Petitioner

Vs

1. State Of Chhattisgarh, Through the Secretary, Department of Higher Education, DKS Bhawan, Raipur (Chhattisgarh)
2. Indira Kala Sangeet University through its Registrar, Indira Kala Sangeet University, Khairagarh, Chhattisgarh
3. Smt. Niti Das, daughter of Late Shri Anil Kumar Das, aged about 55 years, resident of 37/703 RDA Colony Tikara para, Raipur, Chhattisgarh

---- Respondents

For Petitioners	Mr. Saurabh Sharma, Advocate
For Respondent/State	Mr. Y. S. Thakur, Dy. A.G. With Mr. Chandresh Shrivastava, P.L.
For Respective Respondents	Ms. Indira Mishra, Mr. Yogesh Pandey, Ms. Mala Dubey, Mr. Pawan Kesharwani, and Mr. Devesh G. Kela, Advocates.

Hon'ble Shri Justice Prashant Kumar Mishra

C A V Order

6/8/2015

1. Petitioners, Kamladevi Sangeet Mahavidyalaya (for short 'the petitioner college') and the governing body of the said college, have preferred these writ petitions challenging the common order passed by the State Government on 28.05.2009 allowing the appeals preferred by the

employee/respondent No.3 (henceforth 'the private respondent') in each of the writ petition to set aside the order of termination passed by the petitioner college on 19.02.2008.

2. Facts of the case, briefly stated, are that the petitioner college is fully aided private college. The service conditions of the teachers and other employees working in the aided private college is governed under the provisions of the Chhattisgarh Ashaskiya Sikshan Sanstha (Adhyapakon Tatha Anya Karmcharyon Ke Vetano Ka Sandaya) Adhiniyam, 1978 (for short 'the Act, 1978'). The respondent No.3 in WPS No.3056/2009 namely, Smt. Chandana Sen was appointed as Lecturer on 25.10.1993, whereas respondent No.3 in WPS No.3057/2009 namely, Smt. Illa Mukherjee was initially appointed as Lower Division Teacher and thereafter she was promoted as Upper Division Teacher on 08.10.1982 and the respondent No.3 in WPS No.3058/2009 namely, Smt. Niti Das was initially appointed as Lower Division Teacher and thereafter she was promoted as Upper Division Teacher on 04.02.1982. These employees were suspended from their service on 08.10.2007. For continuing their suspension, beyond 90 days the petitioner college sought instructions from the Commissioner, Higher Education on which it was informed by the State Authorities on 29.11.2007 that the Chhattisgarh Non-Government Colleges and Institutions in Higher Education (Establishment and Regulation) Act, 2006 (for short 'the Act, 2006') has already been enacted and

applicable, therefore, the petitioner college should proceed under Section 55 of the Ordinance No.41 (College Code) of the Indira Kala Sangit Vishwavidyalaya, Khairagarh (henceforth 'the University').

3. After issuing the charge sheet and completing the enquiry, wherein the private respondents remained *ex parte*, and enquiry report was submitted and the governing body of the petitioner college decided to terminate the services of the private respondents in its meeting dated 11.01.2008. The said resolution was forwarded to the Vice Chancellor of the University for approval and the Vice Chancellor of the said university by memo dated 08.02.2008 approved the decision and, thereafter, the services of the private respondents were terminated on 19.02.2008.
4. Facts emerging from the pleadings would further reveal that the private respondents preferred appeals before the State Government under Section 6 (1) of the Act, 1978 read with the Rules, 1978 challenging the order of termination dated 19.02.2008. The petitioner college objected to the maintainability of the appeal on the submission that appeal should have been preferred under Section 57 of the College Code, as the provisions of the Act, 1978 has already been repealed by the Act, 2006.
5. In the impugned order, the Appellate Authority i.e. the State of Chhattisgarh has held that the suspension of the private respondents having been admittedly made under the provisions of the Act, 1978 and in view of Section 72 of the

Act, 2006, whereby only such part of the Adhiniyam, 1978 has been repealed, which is inconsistent with the provisions of the Act, 2006, the provisions of the Adhiniyam, 1978 would still apply.

6. Learned counsel appearing for the petitioners would submit that since after enactment of the Act, 2006, the provisions of the Act, 1978 would not be applicable, therefore, the appeal preferred by the private respondents before the State Government was not maintainable. Learned counsel would further submit that under the Act, 2006, the Appellate Authority being the University, the petitioner college was not required to seek approval from the State Government before termination of the services.
7. Per contra, learned counsel appearing for the respondents would submit that the Act, 2006 has not repealed the Act, 1978 as a whole and there being no provision in the Act, 2006 concerning the disciplinary action, the appeal against the order of punishment under the Act, 1978 would still apply and the petitioner college had legal obligation to seek approval from the State Government before terminating the services of the private respondents. The same having not been done, the order of termination has rightly been set aside by the State Government.
8. Bare reading of the order of suspension would make it apparent that the petitioner college has invoked the provisions contained in Section 6 (a) of the Act, 1978. Thus, there is no dispute that the service conditions of the private

respondents are governed under the Act, 1978. The State Government enacted the Act, 2006, which came into force w.e.f. 31.08.2006 i.e. date of its publication in the official gazette. Section 72 of the said Act makes a provision for savings and repeal. The same is quoted hereunder for ready reference.

72. Savings and repeal - The provisions of the Act shall have effect notwithstanding any matter to the contrary contained in any other Acts, rules or orders on the subject for the time being in force :

Provided that the Acts and rules governing the establishment, management and functions of the non-government colleges and prevailing on the date of incorporation of the Act, so far as they, are applicable to various categories of non-governmental institutions in higher education, shall continue to be in force to the extent they are in confirmation of the provisions of the Act.

9. A reading of the provisions contained in Section 72 of the Act, 2006 would make it explicit that it has not expressly or impliedly repealed the Act, 1978. It only says that the provisions of the Act, 2006 would apply notwithstanding any matter to the contrary contained in any other Acts, rules or orders on the subject for the time being in force. Proviso to Section 72 makes it further clear that the Acts and rules governing the establishment, management and functions of the non-government colleges and prevailing on the date of incorporation of the Act, 2006, so far as they are applicable to various categories of non-governmental institutions in higher education, shall continue to be in force to the extent they are in confirmation of the provisions of the Act.

10. Chapter 3 of the Act, 2006 makes provision regarding recruitment, promotion and service conditions etc. of teachers and employees in aided institutions. It contains Sections 27, 28 & 29. The said provisions are reproduced hereunder:-

27. Recruitment of teachers and employees- Recruitment to the post of a teacher or other employee of an institution shall be made -

(1) with prior permission from the State Government and in accordance with the provisions of College Code Statute No.28. However, the application for permission shall be routed through the concerned University.

(2) the Government shall have no objection, if the college recruits teachers out of the resources for the institution. Under no circumstances such posts shall be transferable to the general posts already sanctioned by the Government.

28. Promotion.— The affiliating University shall take appropriate steps in the matters pertaining to placement of promotion of teachers as per the provisions of College Code Statute No.28 from time to time.

However, these placement/promotions shall be subjected to the approval of the Commissioner of Higher Education who shall further take the concurrence of the finance department of the Government. The committee constituted for this purpose shall have one member of the Government to be appointed by the Commissioner of Higher Education.

29. Service conditions.— The University shall review the service conditions of the employees of these aided institutions at least once in three years and inform the government from time to time about the outcome of the review.

11. The provisions contained in Sections 27, 28 & 29, as quoted above, nowhere makes any provision concerning the disciplinary action, termination, etc. of the teachers and employees working in the aided institutions. Although, Section 29 speaks about service conditions, however, it only enjoins the University to review the service conditions of the employees of the aided institutions at least once in three years and inform the government from time to time about the outcome of the review. Thus, the said provision is about general review of the service conditions of the employees, without expressly dealing with the aspect of disciplinary action like suspension, dismissal, termination etc. of the teachers and employees of the aided institutions. Thus, in view of the provisions contained in Section 72 of the Act, 2006, there being nothing contrary in the Act, 1978 with the provisions of the Act, 2006, the Act, 1978 would still apply.
12. It is settled law that in absence of express repeal, the previous provisions would apply and more so when the new enactment has not made any parallel provisions in the Act. If the contention made by the petitioner college is allowed, then there will be no provision concerning the disciplinary action against the teachers and employees of the aided colleges.
13. It is also the settled law that there is a presumption against a repeal by implication. The presumption is, however, rebutted and a repeal is inferred by necessary implication when the provisions of the latter Act are so inconsistent with or

repugnant to the provisions of the earlier Act that the two cannot stand together, but if the two may be read together and some application may be made of the words in the earlier Act, a repeal will not be inferred.

14. The Supreme Court in **R.S. Raghunath v. State of Karnataka and Another**¹, held thus :

15. Shri P. Chidambaram, however, further submitted that a plain reading of Rule 3(2) which is later in point of time would clearly indicate that the special rule providing for promotion by selection is repealed at least by implication. There is no doubt that a later statute may repeal an earlier one either expressly or by implication. In the instant case we have already noted that there is no express repeal of the special rule providing for promotion by selection. The courts have not favoured such repeal by implication. On the other hand it is indicated by the courts that if earlier and later statutes can reasonably be construed in such a way that both can be given effect to, the same must be done. In *Chance*, In *Re Farwell*, J. observed that: “if it is possible it is my duty so to read the section ... as not to effect an implied repeal of the earlier Act.”

16. In *Kunter v. Phillips* it is held that: “It is only when the provisions of a later enactment are so inconsistent with or repugnant to the provisions of an earlier one then only the two cannot stand together and the earlier stands abrogated by the later.” In *Municipal Council, Palai v. T.J. Joseph* this Court has observed that there is a presumption against a repeal by implication; and the reason of this rule is based on the theory that the legislature while enacting a law has a complete knowledge of the existing laws on the same subject matter and therefore, when it does not provide a repealing provision, it gives out an intention not to repeal the existing legislation. It is further observed that such a presumption can be rebutted and repeal by necessary implication can be inferred only when the provisions of the later Act are so inconsistent with or repugnant to the provisions of the

¹ (1992) 1 SCC 335

earlier Act, that the two cannot stand together. I am satisfied that there is no patent inconsistency between the General and Special Rules but on the other hand they co-exist. Therefore, there is no scope whatsoever to infer the repeal by implication as contended by the learned counsel Shri Chidambaram.

15. In the case at hand, as discussed above, the Act, 2006 provides overriding effect to its provisions only to the extent where the provisions of any other Acts, Rules or Orders on the subject for the time being in force is contrary to the Act. Moreover, the proviso to Section 72 dilutes the overriding effect by specifically mentioning that the provisions which are in conformity with the provisions of the Act, 2006 shall continue to be in force.
16. There is no quarrel about pre-requisites of Section 6 (a) (iii) of the Act, 1978 read with Rule 12 (3) (b) of the Chhattisgarh Ashaskiya Sikshan Sanstha (Adhyapakon Tatha Anya Karmcharyon Ke Padachyut Karne/Sewa Se Hatane Sambandhi Prakriya) Niyam, 1983 (for short 'the Rules, 1983'), that after submission of enquiry report, issuance of show cause notice and submission of representation by the teacher or other employee, the whole case is required to be forwarded along with its proposal of the order intended to be passed to the competent authority for its approval. Admittedly, this provision has not been followed in the present case.
17. In view of the above, since the Act, 1978 still applies in the case at hand and before terminating the services of the private respondents, the petitioner college had not followed

the mandatory provisions contained under the Act, 1978 and the Rules, 1983, the State Government has not committed any illegality or irregularity by setting aside the order of termination.

18. *Ex-consequenti*, all the writ petitions, *sans* merit, are liable to be and are hereby dismissed, leaving the parties to bear their own costs.

Sd/-

Judge

Prashant Kumar Mishra

Gowri