

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 4125 of 2011**

Smt. Sangeeta Gouraha (Deceased) Represented By Her Sons:-

1. Nitesh Gouraha S/o Late Pradeep Gouraha & Late Smt. Sangeeta Gouraha Aged About 30 Years R/o Quarter No. F/4, Saket Officers Colony, Near Air Strip, Jagdalpur, District Bastar, Chhattisgarh PIN 494001
2. Rajitesh Gouraha S/o Late Pradeep Gouraha & Late Smt. Sangeeta Gouraha Aged About 30 Years R/o Quarter No. F/4, Saket Officers Colony, Near Air Strip, Jagdalpur, District Bastar, Chhattisgarh PIN 494001

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Higher Education Deptt., DKS Bhawan, Raipur, Chhattisgarh State
2. Principal Govt. Danteshwari Girls College, Jagdalpur, District Bastar, Chhattisgarh

---- Respondent

For Petitioners

Mr. K.R. Nair, Advocate

For Respondent /State

Mr. Sangharsh Pandey, Dy. Govt. Adv.

Hon'ble Shri Justice Prashant Kumar Mishra**C A V Order****08/12/2015**

1. This petition under Article 226/227 of the Constitution of India has been preferred by the petitioner - Smt. Sangitha Gauraha for issuance of writ of mandamus to the respondents directing them to grant regular pay scale and allowances from the date of regularization i.e. 30.06.1999 (Annexure P/5), as has been

granted to others, who were regularized by the same order, with all consequential benefits e.g. seniority, arrears of pay with interest, etc.

2. During pendency of the writ petition, the original petitioner Smt. Sangitha Gauraha (for brevity 'the petitioner') died on 21.12.2014 and is now represented by her legal heirs/sons, whose names have been substituted in the original cause title of the writ petition.
3. The petitioner was appointed as Lecturer by the management of Dhanteshwari Girls College, Jagdalpur, a private College, on ad hoc basis on 15.07.1981. The said college was taken over by the Government w.e.f. 01.10.1982 along with several other private Colleges. In the said order, the State Government reserved its right to absorb the staff working in the private colleges and their services were continued till any such order is passed by the Government. By order dated 02.02.1985, the State Government directed the Principal of the College to terminate the services of such lecturers who were serving in the College on ad hoc basis on the date of absorption. Accordingly, the petitioner and four other ad hoc lecturers were issued the order of termination.
4. Challenging the order of termination, the petitioner preferred a petition before the High Court of Madhya Pradesh, Jabalpur bearing M.P. No.571 of 1985, wherein, an interim order to the effect that the petitioner's services shall not be terminated was passed on 06.02.1985. The writ petition was later on transferred

to the State Administrative Tribunal (henceforth “the Tribunal”) and subsequently, on account of abolition of the Tribunal, the said matter was transferred to this Court and renumbered as WPS No.1267 of 2005.

5. In the meanwhile, the State Government passed an order dated 30.06.1999 directing that the Assistant Professors (Political Science) are made permanent. In the said order, the name of the petitioner finds place at Serial No.66. The Department of Higher Education, State of Chhattisgarh has issued the gradation list of Assistant Professors (Political Science), wherein, the name of the petitioner was also included by mentioning the date of permanent service as 30.06.1999. Another gradation list was issued showing the position as on 01.04.2008 vide Annexure P/11 including the petitioner's name at Serial No.105 by mentioning the same date i.e. 30.06.1999 as the date of becoming permanent member of the service. Despite this order the petitioner has not been granted regular pay scale and allowances. Therefore, the present writ petition.
6. Shri K.R. Nair, learned counsel appearing for the petitioner, would argue that once an order of making the petitioner as permanent member of the service has been passed on 30.06.1999, the Government was duty bound to release the regular pay scale, allowances etc. with all consequential benefits in favour of the petitioner. Learned counsel appearing for the petitioner would further argue that the petitioner was having requisite qualification

at the time of appointment by the private college as ad hoc lecturer or on the date of absorption of the said College, therefore, any subsequent change in the requisite educational qualification would not affect the order of permanence and the State Government committed serious illegality and arbitrariness by denying the regular pay scale and allowance to the petitioner.

7. Per contra, Shri Sangarsh Pandey, learned Dy. Govt. Advocate appearing for the State, would argue that no express order has ever been issued in favour of the petitioner to regularize her services, therefore, the petitioner is not entitled for any relief. Learned counsel would further argue that the order dated 30.06.1999 was wrongly issued in favour of the petitioner. Learned counsel would next argue that under the Madhya Pradesh Regularization of Ad hoc Appointment Rules, 1986 (henceforth "the Rules, 1986"), a Government servant was entitled for regularization if he possesses the requisite qualification prescribed for regular appointment in the existing recruitment rules applicable to the post held by him on ad hoc basis, therefore, the petitioner having not fulfilling the said requisite qualification, she was neither entitled for regularization nor an order of permanence.
8. Indisputably, the petitioner's services were governed under the Madhya Pradesh Educational Service (Collegiate Branch), Recruitment Rules, 1967 (henceforth "the Rules, 1967") as

existing on the date of her ad hoc appointment in the private college and its take over by the Government. When the State Government undertook the exercise of taking over of private colleges, an amendment was issued to the said rules on 14.07.1976. Sub-rule (4) of Rule 13, as introduced by way of amendment provided that teaching staff of the non Government Colleges taken over by the Government shall be absorbed in the manner specified in Schedule III. Clause 1 (iii) of Schedule III provided that 'staff ' means the Principal and the teaching staff of all classes in the permanent or temporary or contract service of the non-government college at the time when the college is taken over by the Government.

9. By another amendment published on 15.08.1980, the Rules, of 1967 were again amended to substitute Sub-rule (4) of Rule 13 which was earlier inserted on 14.07.1976. The new sub-rule (4) provided that Teaching staff, Registrars, Librarians and Sports Officer of the Non-Government Colleges taken over by the Government shall be absorbed in the manner specified in the Schedule III-A. Clause (iv) was introduced in paragraph 3 of Schedule III-A to provide that no person shall be absorbed to a post in the government service, who at the time when the College is taken over by the Government, does not fulfill the minimum requirement qualifications prescribed by the Government in this behalf.

10. As on the date of taking over of the College by the Government, the 1967 Rules provided that a person having second class post graduation degree in the subject shall be entitled and eligible for appointment as lecturer. In the rejoinder, the petitioner has categorically stated that on the date of appointment or absorption of the college, the petitioner was having the requisite qualification and this contention has not been denied by the respondents. The only plea of the respondents is that the petitioner's service is governed by the Rules, 1986 under which the person who possessed the qualification, as it existed in the recruitment rules on the date of coming into force of the Rules, 1986 would be eligible for regularisation.
11. In the considered opinion of this Court, the case of the petitioner is one of absorption in government service pursuant to taking over of the College by the Government. Once the petitioner has been conferred permanent status by issuing express order dated 30.06.1999 and her name has been published as regular member of service by including her name in the gradation list of year 2004 and thereafter, in the year 2008, by specifically mentioning the date 30.06.1999 as the date of which the petitioner became regular member of the service, the petitioner cannot be called upon to defend the said order as has been held by the Supreme Court in **K.R. Mudgal and others Versus R.P. Singh and others, AIR 1986 SC 2086** and **K.P. Shrivastava Versus State of M.P. and others, 2004 (4) MPLJ 162.**

12. In **K.R. Mudgal** (supra) the Supreme Court held thus :

At the outset it should be stated that it is distressing to see that cases of this kind where the validity of the appointments of the officials who had been appointed more than 32 years ago is questioned are still being agitated in courts of law. A Government servant who is appointed to any post ordinarily should at least after a period of 3 or 4 years of his appointment be allowed to attend to the duties attached to his post peacefully and without any sense of insecurity. It is unfortunate that in this case the officials who are appellants before this Court have been put to the necessity of defending their appointments as well as their seniority after nearly three decades. This kind of fruitless and harmful litigation should be discouraged.

(Emphasis supplied)

13. Pursuant to the direction issued by this Court, the original service book of the petitioner has also been produced by learned counsel appearing for the State. The service book refers to one order of the State Government dated 04.12.1990 mentioning that such lecturers of private colleges who were terminated but are working under the interim order of the Court shall be entitled to the minimum pay in the scale of Rs..2200-4000 with the condition that such pay scale is admissible till their absorption in Government service or any other order and thereafter, the amount paid shall be liable to be withdrawn. As and when the pay scales of Lecturers were revised, the petitioner was granted minimum of the pay scale. Service book also refers to the order dated 30.06.1999, whereby, the petitioner has been made permanent, however, even thereafter, the regular pay scale and allowances were not paid to the petitioner.

14. Another contention of the State Government is that the petitioner was given option to obtain higher qualification within stipulated time, however, the petitioner having failed to comply the same, she was continued in service in the minimum pay scale, therefore, till the order of regularization is issued the petitioner is not entitled for regular pay scale and allowances. Reliance placed by learned counsel for the State on the Rules, 1986 is flawed and unacceptable in the teeth of entry in the service book and the order dated 30.06.1999. The petitioner was granted minimum of pay scale vide order dated 04.12.1990, till the order of absorption is issued or any other order is issued by the State Government, as on this date i.e. 04.12.1990 the Rules, 1986 had already come into effect, however, the service book does not refer to the said rules or necessity of passing an order of regularization by the State Government under the Rules, 1986.
15. Thus, it would clearly appear that the State Government was considering the case of the petitioner to be a case of absorption and not a case of regularization. Therefore, once she has been made permanent member of service, it would mean that on the said date, the petitioner was absorbed in service and it is too late for the State to contend that the said order was wrongly issued by the State Government.
16. In view of the settled legal position that a person in whose favour the Government has passed an order and till the date, the order holds the field, having not been withdrawn or cancelled by the

Government, it is not open for the Government to call upon the beneficiary of the order to defend the Government's order. It is not a case where the order was issued without jurisdiction making it void at the inception. On the contrary, in the entire background of the case, the order dated 30.06.1999 was a conscious order of absorption by making the petitioner as permanent member of service, therefore, the petitioner is entitled for regular pay scale and allowances from the said date i.e. 30.06.1999.

17. For the foregoing, the writ petition is allowed and the petitioner is held to be entitled for regular pay scale, allowances and other consequential benefits w.e.f. 30.06.1999 along with interest @ 9% per annum. Since during pendency of the present writ petition the original petitioner died, the entire arrears and other death-cum-retiral dues be paid to the legal heirs of the deceased employee within a period of three months from today.
18. There shall be no order as to costs.

Sd/-

Judge

Prashant Kumar Mishra

Gowri