

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Appeal No. 137 of 2013

1. Chhattisgarh Kalyan Samiti ts Registered Office At Kalyan Mahavidyalaya, Sector 7, Bhilainagar, Distt Durg, Through Chairman R.P.Mishra, S/o Lt Lakhan Lal Mishra, Cg
2. The Governing Body Kalyan Mahavidyalaya Bhilainagar, Tah & Distt Durg, Thruh Chairman R.P.Mishra, S/o Lt Lakhan Lal Mishra
3. Shri Toran Singh Thakur S/o Lt Sukh Ram Thakur Ex-Principal Kalyan Mahavidyalaya, Bhilainagar, R/o Plot No. 1, Professor Colony, Nehru Nagar, Distt Durg, Cg
4. The State Of M.P. Through Its Chief Secretary, Govt. Of M.P. Vallabh Bhavan, Bhopal, Tah & Distt Bhopal, Mp
5. Additional Director Higher Education Directorate, Govt. Of C.G. Near, Govt. Science College, Raipur, Cg

---- Appellants

Versus

1. State Of Chhattisgarh S/o Through Its Chief Secretary, Govt. Of C.G. Dks Bhawan, Raipur, Distt Raipur
2. The State of Madhya Pradesh through its Chief Secretary, Govt. of Madhya Pradesh, Vallabh Bhawan, Bhopal, Tahsil and District, Bhopal (M.P.)
3. Additional Director, Higher Education Directorate, Govt. of Chhattisgarh, Near Govt. Science College, Raipur (CG)

---- Respondents

Writ Appeal No. 468 of 2013

1. State Of Chhattisgarh And Anr. Throguh The Chief Secretary, Government Of C.G. Mahanadi Bhawan,mantralaya Naya Raipur C.G.
2. The Additional Director Directorate Of Higher Education Government Of C.G. Near Govt. Science College, Raipur C.G.

---- Appellants

Versus

1. Chhattisgarh Kalyan Samiti And Ors S/o Reg. Under The Mp Societies Reg. Adhinyam 1976 Having Its Reg. Office At Kalyan Mahavidyalaya Sectro7 Bhilainagar, Tahsil & Distt. Durg C.G. Th. Its Chairman Shri R.P. Mishra, aged about 68 years, S/o Late Shri Lakhan Lal Mishra
2. The Government Body Kalyan Mahavidyalaya Bhilainagar, Tahsil &

Distt. Durg C.G. Th. Its Chairman R.P. Mishra, S/o Lt. Lakhan Lal Mishra

3. Shri Toran Singh Thakur S/o Lt. Sukh Ram Thakur Aged About 72 Years Ex. Pre. Kalyan Mahavidyalaya Bhilainagar, R/o Plot No. 1 Professor Colony, Nehru Nagar Tahsil & Distt. Durg C.G.
4. The State Of Madhya Pradesh Through Its Chief Secretary, Govt. Of Madhya Pradesh, Vallabh Bhawan, Bhopal Tahsil & Distt. Bhopal C.G.

---- Respondents

For Appellant:	Shri Manoj Ku. Dubey, Advocate.
For Respondent/State:	Shri B., Gopa Kumar, Dy. AG.

Hon'ble The Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Order On Board

Per Navin Sinha, Chief Justice

12/08/2015

These two appeals arise out of an order dated 1.1.2013 allowing Writ Petition No.1654/2004 in part only. Aggrieved, the Appellants and the Respondents have both preferred appeals.

2. The Learned Single Judge held that approval for extension of service of Appellant No.3 had been granted by the Department of Higher Education on 19.5.1994 for one year only pursuant to the resolution of the Managing Committee dated 12.7.1992 read with Clause-26 of the College Code. The period ending mid session, Appellant No.3 was entitled to continue till the conclusion of the session in May 1994 only.

3. The order dated 19.5.1994 granted extension of service for one year only as a special case since no government nominee had attended the meeting leading to the resolution dated 12.7.1992 of the Managing Committee in absence of any evidence with regard to due intimation of the meeting. The institution being an aided college it did not warrant issuance

of any directions for continuance of Appellant no.3 for the entire period of two years as recommended by the Managing Committee.

4. We have heard Learned Counsel for the parties in the respective appeals and are satisfied that both the appeals can be disposed on a very short point.

5. The Appellant institution is a Government aided institution governed by the College Code. Clause-26 of Statute No.28 with regard to non-Government colleges reads as under:-

“A permanent teacher shall be entitled to be in the service of the College until he completes the age of sixty two.

Provided that where the date of retirement of a teacher falls due during the course of the academic session the Governing Body shall allow the teacher to continue till the end of the academic year.”

6. The constitution of the Governing Body of autonomous colleges provided for in Statute No.34 reads as follows:-

- (1) Three members to be nominated by the Trust/Management of the College of whom one will be the Chairman.
(The person so nominated shall include at least one outstanding educationist/scientist/jurist/Management Expert). None of these members shall be an employee of the College.
- (2) Two senior most teachers of the College to be nominated in rotation according to seniority, by the principal for a period of two years.
- (3) One nominee of the University not below the rank of Professor.
- (4) One nominee of the State Govt; and
- (5) One nominee of the U.G.C
- (6) The Principal of the College

7. The date of superannuation of Appellant No.3 was 24.10.1992 on attaining the age of 60. The Managing Committee on 12.7.1992 resolved under Clause-26 to extend his service for two years and forwarded it to the

Government. The approval was granted on 19.5.1994 not for two years but one year only as a special case. No reasons in support of the special case have been mentioned by the Respondents except the ground taken that proper intimation of the meeting dated 12.7.1992 was not given.

8. In our opinion, the very short question involved is that the Respondents cannot simultaneously contend that the recommendation of the Managing Committee dated 12.7.1992 was valid and invalid. Either the recommendation was outright invalid or it was a valid recommendation. The Respondents cannot partly accept the recommendation and reject another part of the same recommendation except for valid, cogent and germane reasons. If non-participation of the Government representative vitiated the recommendation dated 12.7.1992, the taint attaches through out and cannot be bifurcated in the manner sought to be done by the Respondents. The Resolution dated 12.7.1992 was composite in nature. We have already observed that no other special reason has been pointed out. The Learned Single Judge has relied only upon the fact that due intimation was not given of the meeting to hold that grant of approval for one year only could not be held to be unreasonable or arbitrary. The respondents cannot blow hot and cold simultaneously.

9. For reasons discussed herein above, we find it difficult to hold that the approval granted by the State Government was valid in the law for a period of one year and invalid for the second year when the recommendation was a composite one and no factor for distinguishing and bifurcation of recommendation has been pointed out by the Respondents.

10. It is therefore held that order of the Respondents dated 19.5.1994 granting approval to the recommendation dated 12.7.1992 for a period of

one year only without any valid distinguishing factor as to how the same resolution was partly valid and partly invalid to apply the principle of severance, the recommendation has to be read and understood and accepted as composite in nature. The date of superannuation of the Appellant No.3 therefore having been extended till October, 1994 by virtue of Clause-26 of the College Code, he shall be deemed to have superannuated in May 1995.

11. Writ Appeal No.137/13 is allowed and Writ Appeal No.468/13 is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE