

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 785 of 2015

- Dr. Phool Das Mahant S/o Late Shri Ghurbindas Mahant Aged 53 Years, Occupation Service, Assistant Professor In Hindi Govt. Naveen College, Jaijaipur, District Janjgir Champa (C.G.) Civil & Revenue District Janjgir Champa (C.G.)

---- Petitioner

Versus

1. The State Of Chhattisgarh Through Principal Secretary To the Department Of Higher Education Mahanadi Mantralaya, Naya Raipur, Post Office & Police Station Naya Raipur, District Raipur (C.G.)
2. The Commissioner Department Of Higher Education, Government Of Chhattisgarh Indravati Bhawan, Naya Raipur, District Raipur (C.G.)
3. The Principal, Govt. Naveen College, Jaijaipur, Dist. Janjgir Champa C.G.

---- Respondents

WPS No. 799 Of 2015

- Dr. Medani Singh (Ms) Patel S/o Shri Tularam Patel Aged About 47 Years Occupation Service, Assistant Professor In Commerce, Government Degree College, Vaishali Nagar, Bhilai, District Drug (C.G.) Civil & Revenue District Durg (C.G.)

---- Petitioner

Vs

1. The State Of Chhattisgarh Through Principal Secretary To The Department Of Higher Education Mahanadi Mantralaya, Naya Raipur, Post Office & Police Station Naya Raipur, District Raipur (C.G.)
2. The Commissioner Department Of Higher Education, Government Of Chhattisgarh Indravati Bhawan, Naya Raipur, District Raipur (C.G.)
3. The Principal, Government Degree College, Vaishali Nagar, Bhilai, District - Durg (C.G.)

---- Respondent

WPS No. 791 Of 2015

- Dr. (Smt.) Alka R. Deo D/o Late Shri Y.S. Lall Aged About 52 Years
Occupation Service Assistant Professor In Political Science,
Government NCJ College Dalli Rajhara, Distt. Balod (C.G.) Civil &
Revenue District Balod (C.G.)

---- Petitioner

Vs

1. The State Of Chhattisgarh Through Principal Secretary To The
Department Of Higher Education Mahanadi Mantralaya, Naya
Raipur, Post Office & Police Station Naya Raipur, District Raipur
(C.G.)
2. The Commissioner Department Of Higher Education,
Government Of Chhattisgarh Indravati Bhawan, Naya Raipur,
District Raipur (C.G.)
3. The Principal Government NCJ College, Dalli Rajhara, Dist. Balod
(C.G.)

---- Respondent

WPS No. 800 Of 2015

- Dr. Goverdhan Singh Thakur S/o Shri Johoran Singh Thakur Aged
About 51 Years Occupation Service, Assistant Professor In
Vanaspati Shastra, Govt. Vishwanath Yadav Tamaskar Degree
Swasasi College, Durg (C.G.), Civil & Revenue District Durg (C.G.)

---- Petitioner

Vs

1. The State Of Chhattisgarh Through Principal Secretary To The
Department Of Higher Education, Mahanadi Mantralaya, Naya
Raipur, Post Office & Police Station Naya Raipur, District Raipur
(C.G.)
2. The Commissioner, Department Of Higher Education,
Government Of Chhattisgarh, Indravati Bhawan, Naya Raipur,
District Raipur (C.G.)
3. The Principal Govt. Vishwanath Yadav Tamaskar Degree Swasasi
College, Durg (C.G.)

---- Respondent

WPS No. 786 Of 2015

- Dr. (Smt.) Gouri Verma W/o Shri M.K. Verma Aged 53 Years Occupation Service, Assistant Professor In Geography, Indira Gandhi Govt. College, Vaishali, Nagar, Bhilai Dist. Durg (C.G.) Civil & Revenue District Durg (C.G.)

---- Petitioner

Vs

1. The State Of Chhattisgarh Through Principal Secretary To The Department Of Higher Education Mahanadi Mantralaya, Naya Raipur, Post Office & Police Station Naya Raipur, District Raipur (C.G.)
2. The Commissioner Department Of Higher Education, Government Of Chhattisgarh Indravati Bhawan, Naya Raipur, District Raipur (C.G.)
3. The Principal Indira Gandhi Govt. College, Vaishali Nagar, Bhilai, Dist Durg (C.G.)

---- Respondent

WPS No. 810 Of 2015

- Dr. Usha Singh W/o Shri S.P. Singh Aged About 49 Years R/o Shubham Vihar, Mungeli Road, Bilaspur, Bilaspur Dist. CG State 495001

---- Petitioner

Vs

1. State Of Chhattisgarh Through The Secretary, Higher Education Department, Secretariat, Mahanadi Bhawan, Naya Raipur, Raipur Dist. C.G. State
2. Commissioner Directorate Of Higher Education, Indravati Bhawan, Naya Raipur, Raipur Dist. C.G. State
3. Principal Govt. Girls PG College, Bilaspur, Bilaspur Dist, C.G. State

---- Respondent

WPS No. 812 Of 2015

- Smt. Purnima Sahu W/o Er. Arvind Sahu Aged About 51 Years R/o

H.No. 253, ICC Transport Nagar, Korba, Distt Korba, C.G. State, Pin No. 495677

---- Petitioner

Vs

1. State Of Chhattisgarh Through The Secretary, Higher Education Department, Secretariat, Mahanadi Bhawan, Naya Raipur, Distt. Raipur, C.G. State
2. Commissioner, Directorate Of Higher Education, Indravati Bhawan, Naya Raipur, Raipur District C.G. State
3. Principal, Govt. E.V. PG College, Korba, Distt Korba, C.G. State

---- Respondent

WPS No. 811 Of 2015

- Dr. Kushuram Matawale S/o Late G.R. Matawale Aged About 50 Years R/o NVC-17, Narmada Vihar, Yadunandan Nagar, Tifra, Bilaspur, 495001.

---- Petitioner

Vs

1. State Of Chhattisgarh, Through The Secretary, Higher Education Department, Secretariat, Mahanadi Bhawan, Naya Raipur, Raipur Dist, C G State.
2. Commissioner, Directorate Of Higher Education, Indravati Bhawan, Naya Raipur, Raipur Dist, C G State.
3. Principal, Govt. Pataleshwar College, Masturi, Tahsil And Post Office Masturi, Bilaspur Dist, C.G. State.

---- Respondent

WPS No. 814 Of 2015

- Jitendra Kumar Barle S/o Ramadhar Barle Aged About 49 Years R/o Amrit Niwas, Ekta Nagar, Thelka Board, Kanker, Kanker Dist C G State, Pin 494334.

---- Petitioner

Vs

1. State Of Chhattisgarh Through The Secretary, Higher Education

Department, Secretariat, Mahanadi Bhawan, Naya Raipur, Raipur Dist, C G State.

2. Commissioner, Directorate Of Higher Education, Indravati Bhawan, Naya Raipur, Raipur Dist, C G Sate.
3. Principal, Govt. Indru Kewat Girls College, Kanker, (PO & Tah) Dist Kanker, C.G. State.

---- Respondent

WPS No. 802 Of 2015

Smt. Neeta Kumbhare W/o Shri Baba Kumbhare Aged About 46 Years Occupation Service Assistant Professor In Geography, Govt. College Vaishali Nagar, Bhilai, Dist. Durg C.G. Civil & Revenue District Durg (C.G.)

---- Petitioner

Vs

1. The State Of Chhattisgarh Through Principal Secretary To The Department Of Higher Education Mahanadi Mantralaya, Naya Raipur, Post Office & Police Station Naya Raipur, District Raipur (C.G.)
2. The Commissioner Department Of Higher Education, Government Of Chhattisgarh Indravati Bhawan, Naya Raipur, District Raipur (C.G.)
3. The Principal Govt. College, Vaishali Nagar, Bhilai, Dist. Durg (C.G.)

---- Respondent

WPS No. 801 Of 2015

- Dr. (Smt.) Asha Choudhary D/o Late Shri Dashrath Prasad Choudhary Aged About 50 Years Occupation - Service, Assistant Professor In History, Govt. Jawahar Lal Nehru Post Graduation College, Dongargarh, District Rajnandgaon (C G). Civil & Revenue District Rajnandgaon (C G).

---- Petitioner

Vs

1. The State Of Chhattisgarh Through Principal Secretary To The Department Of Higher Education, Mahanadi Mantralaya, Naya Raipur, Post Office & Police Station Naya Raipur, District Raipur

(C G).

2. The Commissioner Department Of Higher Education, Government Of Chhattisgarh Indravati Bhawan, Naya Raipur, District Raipur (C.G.)
3. The Principal, Govt. Jawahar Lal Nehru Post Graduation College, Dongargarh, District Rajnandgaon (C.G.)

---- Respondent

WPS No. 805 Of 2015

Dr. Vasudeo Sahasi S/o Shri T.S. Sahasi Aged About 50 Years
Occupation- Service, Assistant Professor In History, Govt. J. Yoganandam Chhattisgarh College, Raipur (C G). Civil & Revenue District Raipur (C G).

---- Petitioner

Vs

1. The State Of Chhattisgarh Through Principal Secretary To The Department Of Higher Education, Mahanadi Mantralaya, Naya Raipur, Post Office & Police Station Naya Raipur, District Raipur (C G).
2. The Commissioner, Department Of Higher Education, Government Of Chhattisgarh, Indravati Bhawan, Naya Raipur, District Raipur (C.G.)
3. The Principal, Govt. J. Yoganandam Chhattisgarh College, Raipur (C.G.)

---- Respondent

WPS No. 806 Of 2015

- Dr. Leela Ram (Lr) Sinha S/o Shri Gosai Ram Sinha Aged 51 Years
Occupation Service Assistant Professor In Economics, Bhanupratapdev Govt. Post Graduation College, Kanker (C.G.)
Civil & Revenue District Kanker (C.G.)

---- Petitioner

Vs

1. The State Of Chhattisgarh Through Principal Secretary To The Department Of Higher Education, Mahanadi Mantralaya, Naya Raipur, Post Office & Police Station Naya Raipur, District Raipur (C.G.)

2. The Commissioner, Department Of Higher Education, Government Of Chhattisgarh, Indravati Bhawan, Naya Raipur, District Raipur (C.G.)
3. The Principal Bhanupratapdev Govt. Post Graduation College, Kanker (C.G.)

---- Respondent

WPS No. 804 Of 2015

- Dr. Dadulal (DI) Patel S/o Shri Ramprasad Patel Aged About 55 Years Occupation-Service, Assistant Professor In Geography, Bhanupratapdev Govt. Post Graduation College, Kanker (C.G.) Civil and Revenue District Kanker (C.G.)

---- Petitioner

Vs

1. The State Of Chhattisgarh Through Principal Secretary To The Department Of Higher Education, Mahanadi Mantralaya, Naya Raipur, Post Office & Police Station Naya Raipur, District Raipur (C.G.)
2. The Commissioner, Department Of Higher Education, Government Of Chhattisgarh, Indravati Bhawan, Naya Raipur, District Raipur (C.G.)
3. The Principal Bhanupratapdev Govt. Post Graduation College, Kanker (C.G.)

---- Respondent

WPS No. 1034 Of 2015

- Dr. Puran Lal Patel S/o Shri Sadharam Patel Aged 49 Years Occupation Service Assistant Professor In Political Science Mahatma Gandhi Govt. Arts & Science College, Kharsiya, Raigarh Chhattisgarh Civil & Revenue District Raigarh Chhattisgarh

---- Petitioner

Vs

1. The State Of Chhattisgarh Through Principal Secretary To The Department Of Higher Education Mahanadi Mantralaya, Naya Raipur Post Office & Police Station Naya Raipur District Raipur Chhattisgarh
2. The Commissioner Department Of Higher Education Government

Of Chhattisgarh Indravati Bhawan, Naya Raipur, District Raipur
Chhattisgarh

- 3. The Principal Mahatma Gandhi Govt. Arts & Science College
Kharsiya, Raigarh Chhattisgarh

---- Respondent

And

WPS No. 1039 Of 2015

- Dr. Basant Kumar (B.K.) Patel S/ Shri Arjun Singh Patel Aged
About 56 Years Occupation Service Assistant Professor In
Commerce Govt. E.V. Post Graduate College Korba Chhattisgarh
Civil & Revenue District Korba Chhattisgarh

---- Petitioner

Vs

- 1. The State Of Chhattisgarh Through Principal Secretary To The
Department Of Higher Education Mahanadi Mantralaya, Naya
Raipur Post Office & Police Station Naya Raipur District Raipur
Chhattisgarh
- 2. The Commissioner Department Of Higher Education Government
Of Chhattisgarh Indravati Bhawan, Naya Raipur, District Raipur
Chhattisgarh
- 3. The Principal Govt. E.V. Post Graduate College, Korba
Chhattisgarh

---- Respondent

For Petitioners	Mr. Dhaniram Patel, Mr. K.R. Nair, Mr. L.C. Patne and Mr. Sudeep Vrma, Advocates
For Respondent/State	Mr. Shashank Thakur, Government Advocate

Hon'ble Shri Justice Prashant Kumar Mishra
Order On Board

22/9/2015

Heard finally with the consent of learned counsel for the parties.

- (2) In view of the commonalty of the issue arising for determination
in these writ petitions, they are considered and disposed of by this

common order.

(3) The petitioners are emergency appointee Assistant Professors. They were appointed in the year 1986, 1987 & 1989 under the then existing M.P. Educational Services (Collegiate Branch) Recruitment Rules, 1967 (in short "the Rules, 1967"). Rule 13(5) of the said Rules made provision for appointment of Lecturers on emergency basis.

(4) In these writ petitions, the petitioners have claimed grant of Senior Pay Scale and Selection Grade Pay Scale by counting their services from the date of initial appointment as emergency appointees. All the petitioners have claimed that if their services are counted from the date of initial appointment as emergency appointees, they are entitled for Senior Pay Scale and Selection Grade Pay Scale on and from the date, they became eligible for such benefit. The issue involved in these petitions have already been decided by the Madhya Pradesh High Court in the matter of **Dr. Sandhya Prasad vs. State of M.P. and others (W.P. No. 807/2007 {s}, decided on 13.07.2007)**. The Writ Appeals preferred by the State of Government against the said order was dismissed by the Division Bench. Against the writ appeals, the State Government preferred SLP before the Supreme Court, which came to be decided in the matter of **State of Madhya Pradesh and others vs. Satyavrata Taran** reported in **(2012) 2 SCC 83**. The Supreme Court remitted back the matter to the High Court for decision afresh with the following observations :

"31. We tried to wade through voluminous materials in the form of schemes, government orders and circulars produced by both the learned counsel appearing for the parties. More we tried to delve into the matter, more and

more murkier facts, which we call normally Pandora's Box, started emerging. Going through these documents could have been done by us, but since those documents were not even produced by way of affidavit and since the learned counsel on the opposite side had no knowledge of those documents, we have thought it fit to remand these matters back to the High Court for fresh disposal in accordance with law, by granting liberty to both the parties to produce all these documents which they tried to rely upon before us.

32. We are also informed by both the learned counsel that it would be in the interest of all the parties that these petitions be heard before one Bench so that the possibility of divergent opinion(s) from the High Court could be possibly avoided. The expression of desire appears to be reasonable and, therefore, we accept the same.

33. In that view of the matter, we allow the appeals, set aside the orders passed by the High Court in all these matters and remand the matter back to the High Court for its fresh consideration in accordance with law. We also give liberty to both the parties to place on record all the documents on which they intend to rely in support of their case including the manner, mode and the source of appointment of each of the Assistant Professors.

34. We also request the learned Chief Justice of the Madhya Pradesh High Court to assign all these matters to the Principal Bench itself so that the matters could be finally settled by one Bench, instead of two or three Benches taking different views on the same set of facts and on the questions of law.

35. Since the matters were pending for some time, we request the learned Chief Justice to either take up the matters by himself or assign it to an appropriate Bench and request that Bench to dispose of the appeals at the earliest. We clarify that we have not expressed any opinion on the merits of the case. Ordered accordingly.

(5) The High Court of Madhya Pradesh thereafter considered the batch of writ petitions afresh and vide judgment rendered in the matter

of **Dr. Ramesh Chandra Dixit and others vs. State of M.P.** reported in **2012 (3) M.P.H.T. 86**, allowed the writ petitions, directing the State Government to consider the case of emergency appointees for grant of Senior Scale/Selection Grade Scale by treating the services rendered by them from the initial date of appointment as regular appointment for the purpose of conferring the benefit of Senior Pay Scale and Selection Grade Pay Scale. The State of Madhya Pradesh again preferred batch of writ appeals against the said order before the Division Bench, which came to be dismissed by the judgment rendered in the matter of **State of M.P. and another vs. Dr. Ramesh Chandra Dixit**, reported in **2013 (IV) MPJR 123**, The following has been held by the Division Bench :

14.....the persons who were duly recruited after following the procedure for emergency appointment except, the interview by the Commission, were entitled to be regularized from the date of initial appointment and not by subsequent date.

15. The learned Single Judge has considered the matter extensively and by a reasoned order. As discussed hereinabove, the emergency appointees were duly regularized even by the State after getting concurrence from the State Public Service Commission, though aforesaid order has been given effect to with effect from 24.12.1998 but considering the facts and circumstances of the case, these were entitled for the benefit from the date of initial appointment as has been held by the writ Court.

16. In the result,, these appeals are found without merits and are dismissed. The appellants, however, shall give effect to the order passed by the writ court within a period of 60 days

from today and shall also make payment of monetary benefit within the aforesaid period.”

(6) The SLP No.6269/2012 and other connected SLPs preferred against the order passed by the Division Bench in writ appeals came to be dismissed by the Supreme Court on 18.02.2015.

(7) It is informed at the bar that Review Petition (C) No.1348 of 2015 in SLP (C) No.30492/2013, which was one of the SLP in the batch has also been dismissed by the Supreme Court on 13.05.2015.

(8) In the State of Chhattisgarh, the State Government framed Rules known as Chhattisgarh Regularization and Emergency Appointment Rules, 2005 (for short 'the Rules, 2005') for the benefit of such emergency appointees who were not regularized in the erstwhile State of Madhya Pradesh. The petitioners having already been regularized w.e.f. 24.12.1998 by the order issued by the State of Madhya Pradesh on 23.03.1989, were not covered under the said Rules. However, since other emergency appointees who were not regularized prior to 01.11.2000 i.e. creation of the State were still serving in this State, they preferred W.P. No.1164 of 2006 before this Court, which was disposed of by the Division Bench on 01.04.2010 in the following manner:

7. Since the Madhya Pradesh High Court has adjudicated the matter in the cases of similarly situated candidates to the instant writ petitioners, we are of the opinion that we may leave it upon the State Government to take fresh decision taking into consideration the judgment and order of the Madhya Pradesh High Court. However, with

regard to seniority, we are of the opinion that since these petitioners could not succeed in the examination conducted by the P.S.C., the candidates selected in that particular selection process in which the petitioners could not be cleared by the P.S.C. examination, cannot become juniors to the petitioners and as such the State Government may also consider to place these petitions in appropriate place in the seniority list.

(9) When the order passed by the Division Bench was not complied by the State Government, Contempt Petition (C) No.20/2012 was preferred, wherein, the State Government submitted an undertaking for complying the order. Prior to that, the State Government had issued a Circular on 06.07.2011 in terms of the order passed by the High Court of Madhya Pradesh in the first round of litigation. However, the said Circular was withdrawn on 30.07.2012 mentioning therein that the order passed by the Division Bench of Madhya Pradesh High Court shall remain binding on the State Government of Chhattisgarh. This Circular was issued by the State of Chhattisgarh during pendency of the writ appeals before the Madhya Pradesh High Court in the second round of litigation. Since the Division Bench had stayed the judgment rendered by the Single Judge in the matter of **Dr. Ramesh Chandra Dixit (supra)**, the State Government of Chhattisgarh observed that the order on the issue to be taken by the State of Chhattisgarh shall be bound by the order passed by the Division Bench of the Madhya Pradesh High Court.

(10) It is informed that the Contempt Petition No.310/2014 seeking compliance of the common order dated 01.04.2010 in WP No.1164 of

2006 and other connected petitions, is pending consideration before the jurisdictional contempt Bench.

(11) While the petitioners have relied on the orders passed by the Single Bench and Division Bench of the Madhya Pradesh High Court, which have allowed the Writ Petitions preferred by similarly placed emergency appointees, learned State Counsel would submit that the petitioners were emergency appointees and were back-door entrants, therefore, in terms of the law laid down by the Supreme Court in the matter of ***Secretary, State of Karnataka and others v. Uma Devi (3) and others***¹, they are not entitled for counting of their services prior to the regularization i.e. service rendered by them prior to 24.12.1998. He would also submit that all the petitioners failed to clear the examination undertaken by the Public Service Commission, therefore, in terms of Condition No.3 of the order of appointment they are not entitled to be regularized from a date prior to they having cleared the examination by the Public Service Commission or the date of regularization, as doing so would amount to regularize their past services before regularization.

(12) Indisputably, the petitioners were also appointed in exercise of powers under Rule 13(5) of the Rules, 1967 and were similarly placed like the petitioners before the Madhya Pradesh High Court. In fact, when the petitioners were appointed in the year 1986 to 1989 in the undivided State of Madhya Pradesh, they were governed by the same set of rules. Although the Rules of 1967 have since been replaced by the M.P./C.G. Educational Service (Collegiate Branch) Recruitment Rules,

¹ (2006) 4 SCC 1

1990 yet the same Rules still apply in the State of Chhattisgarh.

(13) The law having been settled in the case of similarly appointed persons by the Single Bench of Madhya Pradesh High Court, affirmed by the Division Bench in Writ Appeal and SLP having been dismissed by the Supreme Court, this Court is of the considered opinion that the petitioners are also entitled for similar relief.

(14) In view of the above, all the writ petitions stand allowed. The State Government shall consider the case of all the petitioners/emergency appointees for grant of Senior Pay Scale/Selection Grade Pay Scale by treating the services rendered by them from the initial date of appointment as regular appointment for the purpose of conferring the benefit of Senior Pay Scale and Selection Grade Pay Scale. Needless to say, in view of the above order, the order impugned cannot be given effect to by the State Government of Chhattisgarh

Sd/-

Judge

(Prashant Kumar Mishra)

Shyna