

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 4095 of 2015**

1. Devendra Chaphekar S/o Late Umakant Chaphekar, Aged About 40 Years R/o. House No. 32/1214, Ravi Gram, Shyam Nagar, P. S. Saraswati Nagar, Raipur, Tahsil & District Raipur, Civil & Revenue District Raipur, Chhattisgarh.
2. Bhisham Sonkar, S/o B. R. Sonkar Aged About 31 Years R/o Sonkar Para, Purani Basti, Raipur, P. S. Purani Basti, Tahsil & District Raipur, Civil & Revenue District Raipur, Chhattisgarh.

---- Petitioners**Versus**

1. The State Of Chhattisgarh Through : Secretary, Department Of Higher Education, Mahanadi Bhawan, Naya Raipur, Raipur District Raipur, Chhattisgarh.
2. The Secretary, Chhattisgarh Public Service Commission (C G P S C) Shankar Nagar, Raipur, District Raipur, Chhattisgarh.
3. Examination Controller, Chhattisgarh State Public Service Commission, Raipur, District Raipur (Chhattisgarh)
4. Director, Directorate Of Higher Education, Naya Raipur, Raipur, District Raipur, Chhattisgarh.
5. Smt. Kiran Balal Dubey W/o Shri Basant Dubey, Aged About 43 Years R/o. C/o. Shri Anil Pandey, Choubey Colony, Near Maharastra Bhawan, Raipur, Tahsil & District Raipur (Chhattisgarh).
6. Swati Jain W/o. Shri Vikash Jain, Aged About 29 Years R/o. C-170, Taigor Nagar, Beside Old Office O Vyapam, Raipur, Chhattisgarh.
7. Varsha Sharma D/o. Dr. Santosh Kumar Sharma, Aged About 28 Years R/o Near Bus Stand, Gariaband Road, Rajim, Tahsil & District Raipur, Chhattisgarh.

---- Respondents

For Petitioners	: Mr. A.K. Prasad, Advocate.
For Respondents No. 1 to 4/State	: Mr. Garry Mukhopadhyaya, Dy. Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****30/11/2015**

(1) Writ petition (S) No. 1824/2011 preferred by petitioner was dismissed by this Court on 11th September, 2014. Petitioner preferred writ appeal thereagainst. Writ Appeal No. 361/2014 was also dismissed by the Division Bench of this Court on 15.10.2014 observing that if the petitioners are aggrieved by hostile discrimination, they may approach the authorities for consideration of their grievance.

(2) Instant writ petition has been filed by the petitioners for direction to respondents authorities to decide the representation dated 05.11.2014.

(3) It is well settled that once the writ petition has been dismissed on merits finding the petitioner has no case and that order has been affirmed in the writ appeal, no further writ can be issued in favour of the petitioner.

(4) In the matter of **A.P. SRTC & others Vs. G. Srinivas Reddy & others**¹, Their Lordships of the Supreme Court has held that direction to consider the representation has not to be passed without examining the issue & without recording finding on issue and observed in paragraphs 14 to 18 as under:-

“14. We may, in this context, examine the significance and meaning of a direction given by the court to “consider” a case. When a court directs an authority to “consider”, it requires the authority to apply its mind to the facts and circumstances of the case and then take a decision thereon in accordance with law. There is a reason for a large number of writ petitions filed in the High Courts being disposed of with a direction to

1 (2006) 3 SCC 674

“consider” the claim/case/representation of the petitioner(s) in the writ petitions.

15. Where an order or action of the State or an authority is found to be illegal, or in contravention of the prescribed procedure, or in breach of the rules of natural justice, or arbitrary/unreasonable/irrational, or prompted by mala fides or extraneous consideration, or the result of abuse of power, such action is open to judicial review. When the High Court finds that the order or action requires interference and exercises the power of judicial review, thereby resulting in the action/order of the State or authority being quashed, the High Court will not proceed to substitute its own decision in the matter, as the will amount to exercising appellate power, but require the authority to “consider” and decide the matter again. The power of judicial review under Article 226 concentrates and lays emphasis on the decision-making process, rather than the decision itself.

16. The High Courts also direct the authorities to “consider”, in a different category of cases. Where an authority vested with the power to decide a matter, fails to do so in spite of a request, the person aggrieved approaches the High Court, which in exercise of the power of judicial review, directs the authority to “consider” and decide the matter. In such cases, while exercising the power of judicial review, the High Court directs “consideration” without examining the facts or the legal question(s) involved and without recording any findings on the issues. The High Court may also direct the authority to “consider” afresh, where the authority had decided a matter without considering the relevant facts and circumstances, or by taking extraneous or irrelevant matters into consideration. In such cases also, the High Court may not examine the validity or tenability of the claim on merits, but require the authority to do so.

(17) Where the High Court finds the decision-making process erroneous and records its findings as to the matter in which the decision should be made, and then directs the authority to “consider” the matter, the authority will have to consider and decide the matter in the light of its findings or observations of the court. But where the High Court without recording any findings, or without expressing any view, merely directs the authority to “consider” the matter, the authority will have to consider the matter in accordance with law, with reference to the facts and circumstances of the case, its power not being circumscribed by any observations or findings of the Court.

(18) We may also note that sometimes the High Courts dispose of the matter merely with a direction to the authority to “consider” the matter without examining the issue raised even though the facts necessary to decide the correctness of the order are available. Neither pressure of work nor the complexity of the issue can be a reason for the court to avoid deciding the issue which requires to be decided, and disposing of the matter with a direction to “consider” the matter afresh. Be that as it may”

(5) In view of afore-stated legal position, the writ petition is dismissed because no mandamus can be issued to decide representation as no *lis* has been brought for adjudication except to issue direction for deciding representation.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-