

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 422 of 2015**

1. State of Chhattisgarh, Through the Secretary, Department of Higher Education, DKS Bhawan, Raipur, Chhattisgarh, (Now Mahanadi Bhawan Mantralaya, Naya Raipur, Chhattisgarh).
2. The Commissioner, Higher Education Department, Government of Chhattisgarh DKS Bhawan, Raipur (Now Mahanadi Bhawan, Mantralaya Naya Raipur, Chhattisgarh).
3. The Principal, Government Girls P.G. College, Bilaspur, Chhattisgarh.

---- Appellants**Versus**

1. Kanhaiya Lal Shrivastava, son of Shri B.S.Shrivastava, Tabla Teacher (Terminated) Resident of Hatri Chowk, Kila Ward Juna Bilaspur, P.S. Kotwali, Tahsil and District Bilaspur, Chhattisgarh (Dead, Through LRs):
 - a. Smt. Sunita Shrivastava Wd/o Late Kanhaiya Lal Shrivastava.
 - b. Ku. Anjali Shrivastava D/o Late Kanhaiya Lal Shrivastava.
 - c. Abhishek Shrivastava S/o Late Kanhaiya Lal Shrivastava.
 All are residents of Ward No. 26, Kilaward Juna Bilaspur, Chhattisgarh.
2. State of Madhya Pradesh Through the Secretary, Department of Higher Education, Government of M.P. Vallabh Bhawan, Bhopal, Madhya Pradesh.
3. The Commissioner, Higher Education Department, Government of Madhya Pradesh, Satpuda Bhawan, Bhopal.

---- Respondents

For Appellants	:	Shri Prafull N. Bharat, Additional Advocate General.
For Respondent No. 1	:	Ms. Naushina Ali, Advocate.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Judgment on Board**27/10/2015**

1. The present appeal arises from order dated 23.6.2014 allowing Writ Petition (S) No. 4184 of 2005 setting aside the termination order of

Respondent No.1 dated 12.8.1998 with directions for payment of consequential benefits for arrears of salary and seniority.

2. I.A. No. 1 of 2015 has been filed to condone delay of 371 days in filing the appeal. Considering the explanation for delay and the Review petition also filed against the order under appeal, after hearing Counsel for the parties, delay is condoned.

3. During pendency of the appeal, Respondent No. 1 has been deceased on 28.9.2015. I.A. No. 5 of 2015 has been filed for impleading his legal heirs. Considering that any order may have implications for the family of the deceased, the application for substitution is allowed. No fresh notices need issue as the legal heirs are duly represented by Counsel. Learned Counsel for the Appellants is permitted to carry out the necessary amendments during the course of the day.

4. Learned Additional Advocate General for the State submits that the post of Tabla Teacher was a promotional post the feeder post for which was Tabla Player. Respondent No.1 was wrongly appointed on 13.5.1998 as a direct recruit on the post of Table Teacher. No sooner that the error was detected, he was terminated as soon as 12.8.1998. After the writ petition was allowed, Review Petition No. 62 of 2015 was also dismissed on 28.7.2015 declining to examine the question of illegality of the appointment. The cause of action being personal, upon the demise of the original respondent No.1 the relief for reinstatement has become infructuous.

5. Learned Counsel for the legal heirs submits that the appointment of the deceased was neither illegal nor was it a backdoor appointment. The deceased was not at fault in any manner and he cannot be visited with the consequences for any lapses committed by the Appellants. The appointment was made in consonance with Article 14 of the Constitution after calling of names from the Employment Exchange and assessment by a duly constituted

Selection Committee. The deceased fulfilled the eligibility qualifications prescribed under the rules for appointment as Tabla Player and Tabla Teacher both, except for the duration of service on the feeder post. If the Appellants committed an error in direct appointment on the post of Tabla Teacher, they ought to have rectified the error by offering appointment to the deceased in his life time on the post of Tabla Player instead of terminating him.

6. The deceased pursued the matter relentlessly before the State Administrative Tribunal in 1998 and filed appeal pursuant thereto only after which he was informed the reason for termination on 13.11.2000 was as having been appointed on a general category post while he belonged to the OBC category. The ground now sought to be urged on behalf of the Appellants is totally alien to the reasons mentioned in the order dated 13.11.2000. The ground that Tabla Teacher was a promotional post was an afterthought and therefore, the review petition was rightly dismissed. The deceased suffered throughout his life and could not get relief even though he had taken all necessary legal steps to protect his interest including two contempt applications arising from the order under appeal. Had the writ petition been heard expeditiously he would have got relief during his life time. All efforts for urgent hearing of the case proved futile. In the peculiar facts of the case, at least the Appellants may be directed to consider compassionate appointment or any other suitable direction with regard to one of the eligible legal heirs in accordance with law. Alternately, the legal heirs may be suitably compensated monetarily for the misadventures of the Appellants, if no other relief can be granted.

7. We have considered the submissions on behalf of the parties.

8. It is evident from the recruitment Rules that the post of Tabla Teacher was a promotional post the feeder post for which was Tabla Player. Direct recruitment could not be made on the promotional post. If the Appellants made

an appointment in violation of the Rules and the deceased was not at fault, it cannot lend validity to an appointment made contrary to law. The appointing authority for the post of Tabla Teacher was the Additional Director while the deceased was appointed by the Head Master who was competent to make appointment on the post of Tabla Player only. There is also no dispute that the deceased fulfilled the eligibility qualifications otherwise for appointment both as Tabla Player as well as Tabla Teacher except for the duration of service in case of the latter post.

9. If that be the undisputed correct position, the fact that the appointment may have been made after calling of names from the Employment Exchange and through a selection committee cannot confer legality on the appointment. No sooner that the mistake was detected, the services of the deceased were terminated within three months. Had the deceased worked for long years and was then sought to be removed on that ground, issues with regard to his adjustment on the post of Tabla Player may have been relevant for discussion. The deceased challenged his removal before the State Administrative Tribunal in Original Application No. 685 of 1998, but after some argument, withdrew it to file an appeal before the competent authority. Only thereafter, he was informed by letter dated 13.11.2000 that he had been appointed against general category post though he belonged to OBC category. This was a wholly irrelevant issue raised without any application of mind in utter callous negligence by the person issuing it who obviously did not even bother to read the official files and discharge his duties properly for which he was being paid salary. But the mere fact that a wrong ground may have been mentioned in the communication will not lend validity to the original appointment made by direct recruitment against a promotional post by an authority incompetent to do so. To dismiss this appeal on the ground that the Appellants appear to be taking shifting stands, vacillating from one ground to another will not be appropriate as it will amount to affirming a wrong order of appointment by direct

recruitment against a promotional post by an authority incompetent to do so.

10. The deceased moved the State Administrative Tribunal again in 2001 after receipt of communication dated 13.11.2000 which stood transferred to this Court after abolition of the State Administrative Tribunal leading to registration of the Writ Petition. It is unfortunate that the matter remained pending for these long years for no fault of the deceased.

11. If the deceased was not appointed in accordance with law and never got to be actually reinstated, we find it very difficult on the basis of sympathy alone to make any observations with regard to the legal heirs. Considering the very short duration for which he had worked we find it difficult to grant any monetary compensation also.

12. The orders under appeal are therefore set aside and the writ appeal is allowed.

Sd/-

(Navin Sinha)
CHIEF JUSTICE

Sd/-

(P. Sam Koshy)
JUDGE