

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 158 of 2017**

1. State of Chhattisgarh through Secretary Department of Veterinary (Present parent Department or earlier Dairy Department) Mahanadi Bhawan, Naya Mantralaya Naya Raipur P.S. Rakhi Raipur Chhattisgarh
2. The Director Directorate of Veterinary Services (Present parent Department or earlier Dairy Department) Indrawati Bhawan P.S. Rakhi Naya Raipur Chhattisgarh

---- Appellants**Versus**

Vedprakash Shrivastava S/o Late Shri Puttupal Shrivastava R/o Vrindavan Colony Behind Kalibadi School Jagdalpur District Jagdalpur Chhattisgarh

---- Respondent

For Appellants	: Shri Y.S. Thakur, Additional Advocate General..
For Respondent	: Shri Neeraj Choubey, Advocate.

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Sharad Kumar Gupta, Judge.

Judgment on Board**Per Thottathil B. Radhakrishnan, Chief Justice****21/07/2017**

1. We have heard the learned Additional Advocate General and the learned counsel for the Respondent.
2. This appeal is against the judgment by which the learned Single Judge ordered the payment of compensation equivalent to 50% of the back wages in lieu of reinstatement of the Respondent in service.
3. A circular dated 13.1.1997 provided for the constitution of a Committee to determine whether employees who have attained either 55 years of age or had put in 25 years of service are to be permitted to continue in government service or are to be retired. The decision went against the Respondent and he was given notice for retirement. He challenged it before the State Administrative Tribunal.

Prayer for interim relief was refused through an order stating reasons and deferring the claim of the Petitioner to be considered at the time of final hearing. Ultimately, on the abolition of the State Administrative Tribunal, the matter transferred to the High Court. The proceedings initiated before the Tribunal in 1998 was re-registered before the High Court as a writ petition in 2005 and that has been determined through the impugned judgment dated 13.5.2016. As noted in paragraph-14 of the impugned judgment that by that time, the Petitioner who was 50 years of age when he moved the Tribunal had attained the age of 68 years.

4. After the original application was instituted before the Tribunal in 1998, the Madhya Pradesh High Court held in *State of Madhya Pradesh v. B.L. Kaul & Others, 2000 (1) MPHT 79*, that when the circular dated 13.1.1997 required constitution of the Committee by including the persons manning the offices named in that circular, the Committee cannot be constituted excluding any among such persons. When the writ petition was heard, the learned counsel for the Petitioner (Respondent herein) cited the said judgment to contend that in the case in hand, instead of Secretary of General Administration Department, it was the Deputy Secretary in that Department who participated as a member of a Committee. The learned Single Judge was of the view that this plea deserved to be entertained since it was dependent on a precedent which related to the question of jurisdiction and authority. Thus, the learned Single Judge found that the retirement of the Petitioner following the evaluation of the Committee has to go on technical grounds.
5. Thereupon, following the law laid down by the Supreme Court of India in *State of Gujarat v. Umedbhai M. Patel, 2001 AIR SCW 862* and *State of Madhya Pradesh v. Laxmi Chand Awadhiya & Others, 2002 (5) MPHT 228 (DB)*, the learned Single Judge ordered the writ petition directing the State to pay the Petitioner, who is Respondent herein, an amount equivalent to the 50% of back wages till the date of his retirement and thereafter 50% of the arrears of pension after revising the

same as a consequence of the quashing of the order impugned before the learned Single Judge.

6. This writ appeal has been filed with an application seeking condonation of delay more than 11 months. The reasons stated for the delay is the usual excuse of administrative delays.
7. Having examined the facts of the case, we are of the view insofar as the case in hand is concerned, no ground could be made out for interference in this appeal because, the only issue on which the appeal stands is the plea of the State that after the afore-noted circular dated 13.1.1997, there was another circular issued on 2.7.1997, which according to the Learned Additional Advocate General, contained the provisions under which the Deputy Secretary could have participated in the Committee. This was not a plea that appears to have been carried in opposition to the ratio in *B.L. Kaul (supra)* before the learned Single Judge, though the writ Petitioner had not raised any written plea in that regard in the writ petition.
8. On the totality of the facts and circumstances, we are of the view that no grounds have been made out to condone the delay or to sustain the appeal except for an order clarifying that the judgment in *B.L. Kaul (supra)* as well as the impugned judgment of the learned Single Judge do not bind the State in relying on the circular dated 2.7.1997 in other litigations where such issue may be relevant; and for seeking reconsideration of the ratio in *B.L. Kaul (supra)* on the basis of the said circular dated 2.7.1997.
9. In the result, subject to what is stated in the immediately preceding paragraph, the application seeking condonation of delay as well as the appeal are dismissed.

Sd/-

(Thottathil B. Radhakrishnan)
CHIEF JUSTICE

Sd/-

(Sharad Kumar Gupta)
JUDGE