

HIGH COURT OF CHHATTISGARH AT BILASPURWP No.128 of 2003

Uma Shankar Vyas S/o Shri Gauri Shankar Vyas, aged about 34 years,
Occupation Assistant Teacher, Rastriya Uchatar Madhamik Vidyalaya,
Raipur (C.G.).

---Petitioner

Versus

1. State of Chhattisgarh, through Secretary, School Education Department, Mantralaya, D.K.S.Bhawan, Raipur (C.G.).
2. Director (Public Instructions), Chhattisgarh, Raipur.
3. Rastriya Vidyalaya Samiti, An Education Society registered Under Societies Registration Act having its Registered Office at Bal Ashram Parisar Kutcheri Road, Raipur through its Secretary, Raipur (C.G.).

---Respondents

For the petitioner	:	Shri Soumya Roy on behalf of Shri Ashish Shrivastava, Advocate.
For respondent No.3	:	Shri Sudeep Agrawal, Advocate.
For State	:	Shri Gary Mukhopadhyay, Govt.Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

15/12/2017

1. The challenge in the present Writ Petition is to the order dated 22/12/2001 - annexure P/25 whereby the State authority have passed an order that, the petitioner is entitled for the salary and the other emoluments of an Assistant Teacher and that the actual monetary benefits shall be payable to him prospectively i.e. from the date of order passed on 22/10/2001 onwards.

2. The brief facts of the case is that, the petitioner was appointed on 06/05/1996 as an Assistant Teacher to the establishment of respondent No.3. The respondent No.3 is a private aided institution and the appointment of the petitioner was with the approval of the State Government and the said approval was granted on 26/04/1996 – annexure P/4 to the petition.

3. It is pertinent to mention that, the petitioner was engaged on the post which was earlier occupied by one Rukmani Kashyap whose services was terminated in the year 16/04/1991. This Rukmani Kashyap had filed a Writ Petition in the Madhya Pradesh High Court registered as Writ Petition No.342/1992. This Writ Petition stood allowed on 27/11/1997 with a relief of reinstatement. As a consequence of the order of the Writ Petition, Rukmani Kashyap was reinstated in service with effect from 31/01/1998 vide annexure P/6.

4. Subsequently, vide order dated 28/04/1999, the status of the petitioner was changed from the post of Assistant Teacher to Shiksha Karmi Gr.III with salary and wages of Shiksha Karmi Gr.III. Against this order, the petitioner had prefer an appeal to the State Government and finally an order was passed on 22/12/2001 whereby the order dated 28/04/1999 ordering for the status of the petitioner to be changed from Assistant Teacher to Shiksha Karmi Gr.III was cancelled. While passing the said cancellation order, the State Government vide the impugned award – annexure P/25 had held that, the petitioner would be entitled for the actual benefits of the post of Assistant Teacher with effect from 22/12/2001 onwards that means for the intervening

period, he would have to remain satisfied with the benefits that he has received of Shiksha Karmi Gr.III. It is this order which is under challenge in the present Writ Petition.

5. The counsel for the petitioner submits that, once when the State Government has cancelled the order dated 28/04/1999 by which the petitioner was placed as a Shiksha Karmi Gr.III goes, as a natural consequence, the petitioners status would get restored to that of an Assistant Teacher and since the petitioner has discharged his duties during the intervening period, he is entitled for the benefits attached to the post of Assistant Teacher and for which he is legally and rightfully entitled.

6. The counsel for the State Government submits that, it is a case where the petitioner infact was appointed against the post which earlier stood in the name of Rukmani Kashyap and since there is an order of reinstatement which has been complied with by the institution, Rukmani Kashyap got reinstated. The petitioner as such would have lost his employment and in order to accommodate him it was ordered to the post of Shiksha Karmi Gr.III which therefore cannot be said to be bad in law. He further submits that even otherwise, since the State Government had already approved the recruitment of Rukmani Kashyap, the State Government cannot be saddled with the responsibility of payment of salary of another person against the same post and if at all there is any payment which has to be made, the same has to be paid by the respondent No.3/Samiti itself and for which the Samiti has also agreed vide annexure - R/3 dated 04/04/1996 which is an

undertaking given by the Samiti to the Joint Director, Public Instruction, Raipur.

7. From the submissions made by the counsel on either side what reflected is that, the petitioner in the instant case was substantively appointed as an Assistant Teacher and on which post he continued to serve uninterruptedly, though the petitioner seems to have been appointed on the termination of one Rukmani Kashyap. The order of termination of Rukmani Kashyap was set aside by the High Court and she had to be reinstated and which was complied with by the respondent. However, the petitioner continued to discharge his duties, but meanwhile the petitioner's status was changed from Assistant Teacher to Shiksha Karmi Gr.III.

8. Subsequently, on an appeal preferred by the petitioner which was allowed by the State Government holding that, once when the State Government has granted an approval of the petitioner on the post of Assistant Teacher, he continues to discharge his duties that of Assistant Teacher. Further the change of status of the petitioner from Assistant Teacher to Siksha Karmi Gr.III was cancelled by the State Government vide order dated 22/12/2001. Undisputedly, the petitioner during the intervening period has discharged his duties in the institution of respondent No.3/Samiti.

9. The only issue which is left to be consider by this Court is, whether during the intervening period i.e. when the petitioner status was changed from the post of Assistant Teacher to that of Shiksha Karmi Gr.III, the

petitioner would be entitled for the salary and the emoluments of Assistant Teacher or that of Shiksha Karmi Gr.III.

10. The order changing the status of the petitioner from that of the Assistant Teacher to Siksha Karmi Gr.III has got cancelled on 22/12/2001. As a consequence of the cancellation, the order of changing the status of the petitioner from the Assistant Teacher to Shiksha Karmi Gr.III does not exist at all and if the order dated 28/04/1999 does not exist or has been declared to be null and void, the effect would be that the petitioners post remains that of Assistant Teacher at which she was substantively appointed and worked during all this period as well.

11. It is nobody's case that, the order dated 28/04/1999 changing the status of the petitioner from Assistant Teacher to Shiksha Karmi Gr.III has not been quashed. Admittedly, once when it has been quashed, the petitioner assumes the status of Assistant Teacher and in the absence of the order dated 28/04/1999 it is to be presumed and the legal implication which could be safely given in the case of the petitioner is declaring her as an Assistant Teacher all along, and thus for the intervening periods he would be entitled for the salary and the other emoluments that he was getting prior to her status being changed.

12. In view of the aforesaid discussion, the present petition deserves to be and is accordingly set aside and the order dated 22/12/2001 stands modified to the extent that, the petitioner would be entitled for the benefits of the

salary and the other emoluments on the post of Assistant Teacher instead of Shiksha Karmi Gr.III.

13. The Writ Petition stands allowed and disposed off.

Sumit

Sd/-
(P. Sam Koshy)
JUDGE