

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No.1845 of 2017

- Dr. B. K. Mehta S/o Late Shri H. P. Mehta, Aged About 72 Years R/o & C/o Dr. J. K. Mehta, 2 B 2 Sonal Towers, Near Agrasen Chowk, District Bilaspur (Chhattisgarh)

---- Petitioner

Versus

1. Pt. Ravishankar Shukla University Through Registrar, Raipur, District Raipur (Chhattisgarh)
2. Executive Committee, Through The Chairman, Pt. Ravishankar Shukla University, Raipur, District Raipur (Chhattisgarh)

---- Respondents

For Petitioner	:	Shri Prateek Sharma, Advocate
For Respondents	:	Shri Neeraj Choubey, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

15/11/2017

Heard.

2. The petitioner seeks to challenge resolution dated 05-11-2014 passed by the Executive Council of the University, followed by order dated 31-12-2014, by which, to the extent it denies full salary in respect of the period, during which, the petitioner remained under suspension.

3. Learned counsel for the petitioner, relying upon the decision of the Supreme Court in the case of ***Shobha Ram Raturi vs. Haryana Vidyut Prasaran Nigam Limitd and Ors., AIR 2016 SC 157***, would submit that in a case, where proper treatment to the period under suspension is to be given in exercise of powers under the applicable rules, the principle of "No Work No Pay" has no application. Therefore, the decision making progress in purported exercise of power under Clause 61 of the Statute No.31 is bad in law.

4. Learned counsel for the respondents would submit that apart from applying the

principle of “No Work No Pay”, other relevant considerations, as reflected from the resolution, prevailed with the authority to put an end to the dispute and close the chapter in a particular manner. He would submit that the authorities have decided not to proceed further against the petitioner, looking to the fact that he was superannuated in the year 2008 and aged 68 years. The departmental enquiry, which the respondents could have initiated, in exercise of liberty granted by this Court on the allegations of financial irregularity and loss to the institution, was dropped. Therefore, the decision cannot be said to be illegal. He further submits that the petitioner otherwise has alternative and statutory remedy of filing an appeal before the Chancellor.

5. True it is that there appears to be alternative remedy of filing an appeal before the Vice Chancellor, the settled legal position as adumbrated by the Supreme Court in the case of **Shobha Ram Raturi** (supra), while exercising discretionary jurisdiction with regard to treatment to be given to the period of suspension, the principle of “No Work No Pay” will have no application.

6. After going through the resolution dated 05-11-2014, I find that in order to come to the decision that the petitioner will not be paid salary for the period, during which, he remained under suspension, certain considerations along with principle of “No Work No Pay” has been made applicable. There lies a defect in the decision making process. The process is infected by consideration not permissible under the law i.e. non-applicability of principle of “No Work No Pay” in the matter of proper treatment to the period of suspension.

7. In the case of **Shobha Ram Raturi** (supra), Hon'ble Supreme Court examined the issue, as below:-

1. It is not a matter of dispute, that the appellant was retired from service on 31.12.2002, even though he would have, in the ordinary course, attained his date of retirement on superannuation, only on 31.12.2005. The appellant assailed the order of his retirement dated 31.12.2002 by filing writ petition no. 751 of 2003. The same was allowed by a learned Single Judge of the Punjab and Haryana High Court, on 14.09.2010. The operative part of the order is extracted hereunder:

“Accordingly the present writ petition is allowed; order dated

31.12.2002 (Annexure P-4) is quashed. The petitioner would be treated to be in continuous service with all consequential benefits. However it is clarified that since the petitioner has not worked on the post maxim of “no work, no pay” shall apply and the consequential benefits shall only be determined towards terminal benefits. However there will be no order as to costs.”

2. The denial of back wages to the appellant by the High Court vide its order dated 14.09.2010 was assailed by the appellant by filing Letters Patent Appeal No. 489 of 2011. The High Court rejected the claim of the appellant, while dismissing the Letters Patent Appeal on 26.5.2011. The orders dated 14.09.2010 and 26.5.2011 passed by the High Court limited to the issue of payment of back wages, are subject matter of challenge before this Court.

3. Having given our thoughtful consideration to the controversy, we are satisfied, that after the impugned order of retirement dated 31.12.2002 was set aside, the appellant was entitled to all consequential benefits. The fault lies with the respondents in not having utilised the services of the appellant for the period from 1.1.2003 to 31.12.2005. Had the appellant been allowed to continue in service, he would have readily discharged his duties. Having restrained him from rendering his services with effect from 1.1.2003 to 31.12.2005, the respondent cannot be allowed to press the self serving plea of denying him wages for the period in question, on the plea of the principle of “no work no pay”.

8. Therefore, in these circumstances, decision of respondents not to pay salary for the period of suspension meaning thereby that the financial benefits have been confined only to the suspension allowance that may have been paid to the petitioner while he was under suspension, deserves to be set aside. The authority shall exercise their discretion afresh on relevant considerations without application of principle of “No Work No Pay” and arrive at fresh decision whether the petitioner should be allowed full salary for the period remained under suspension or confined only to the suspension allowance already paid to him. The decision shall be taken by the University as early as possible preferably within a period of three months from the date of first meeting of the Executive Council, after the date of this order.

9. Accordingly, this petition is finally disposed off.

SD/-
(**Manindra Mohan Shrivastava**)
Judge