

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 290 of 2015**

(Arising out of order dated 20.02.2015 passed in Writ Petition (S) No. 2955 of 2011 by the learned Single Judge)

Saugat Banerjee S/o Shri S.C.Banerjee At present aged about 40 years, Occupation-Tabla Teacher, Ramkrishna Nagar, Kota, Raipur, District Raipur, R/o Shivanand Nagar, Sector-3, PO WRS Colony, Raipur, District Raipur.

---- **Petitioner**

Versus

1. State of Chhattisgarh, Through Secretary, Collector, Raipur, District Raipur, Chhattisgarh.
2. Assistant Commissioner, Tribal Development, Raipur, District Raipur, Chhattisgarh.
3. Vivekanand Vidyapeeth, Through, Secretary, Ramkrishna Paramhansa Nagar Kota, District Raipur, Chhattisgarh.
4. Shri O.P.Sharma, Secretary, Vivekanand Vidyapeeth Rama Krishna Paramhansa Nagar, Kota, District Raipur, Chhattisgarh.

---- **Respondents**

For Petitioner	:	Ms. Deepali Pandey, Advocate.
For Respondent/State	:	Shri R.K.Gupta, Deputy Advocate General.
For Respondent No.3	:	Shri Jitendra Pali, Advocate.

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

Judgment on Board

Per Thottathil B. Radhakrishnan, Chief Justice

22.08.2017

1. This writ appeal arises from Writ Petition (S) No. 2955 of 2011 filed by the Appellant-Saugat Banerjee, who was engaged as a Tabla Master in the service of the 3rd Respondent-Vivekanand Vidyapeeth, Raipur, which we hereinafter refer to as the 'Institution'.
2. We have heard the learned counsel for the Appellant, the learned Deputy Advocate General and the learned counsel for the 3rd Respondent-Employer.
3. With the passage of time, many instances or situations have arisen which prompt us to think that in the interest of the employer and the employee, it would be

appropriate that this writ appeal is ordered remitting for reconsideration of Writ Petition (S) No. 2955 of 2011, alongwith another writ petition pending inter parties for the reasons which we will state hereinafter.

4. Two show cause notices dated 25.11.2003 and 30.12.2005 were served by the management on the Teacher. Those notices were subjected to challenge in Writ Petition (S) No. 153 of 2007. The issue then raised was that the disciplinary proceedings have to be regulated by the terms of the Madhya Pradesh Ashashkiya Shikshan Sanstha (Adhyapakaon Tatha Anya Karmachariyon Ke Padachyut Karne/Sewa Se Hatane Sambandhi Prakriya) Niyam, 1983; for short; '1983 Rules'. It appears that a different set of Rules came in 1985 and another set of Rules came in 2006 replacing the 1985 Rules.
5. The judgment in Writ Petition (S) No. 153 of 2007 which was in favour of the Petitioner was the subject matter of Writ Appeal No. 55 of 2008. That was decided by the Division Bench stating that the 1985 Rules would apply, however that for matters in relation to which there is no provision in the 1985 Rules, the 1983 Rules would apply, regarding the conduct of the enquiry.
6. The writ appeal in hand namely Writ Appeal No. 290 of 2015 arises from Writ Petition (S) No. 2955 of 2011 which challenged the subsequent proceedings after the judgment in Writ Appeal No. 55 of 2008 was rendered.
7. It appears that, in the meanwhile, proceedings were carried by the employer and advise of the Collector was sought for, who in turn is stated to have opined that since the Teacher was not on regular service and his appointment was not approved by the Government, the disciplinary proceedings should be treated as a domestic enquiry by the management uncontrolled by the statutory rules.
8. The net result of the aforesaid facts would show that as between the employer and the teacher, there are the judgments rendered by the learned Single Judge

and the Division Bench while the management would have by now proceeded as if none of the Rules apply. Under such circumstances, we are of the view that the jurial relationship of employer and the employee as between the employer and the teacher has to be comprehensively considered particularly in the light of the matter now pending before the learned Single Judge in the form of Writ Petition (S) No. 2725 of 2015 in which an interlocutory order has been issued on 05.08.2015.

9. Therefore, having regard to the questions relating to the privity of employment between the management and teacher, the quality and nature of the Appellant-teacher's engagement by the Institution; and the different questions arising in Writ Petition (S) No. 2725 of 2015 and the questions which would be germane for decision in Writ Petition (S) No. 2955 of 2011 from which this appeal arises, we are of the view that it would be appropriate in the interest of justice that those writ petitions are dealt with together. To pave way for this, the impugned judgment needs to be set aside to facilitate remand of Writ Petition (S) No. 2955 of 2011 for consideration *de novo* untrammelled by anything stated in the judgment rendered by the learned Single Judge, which is impugned in this writ appeal.
10. For the aforesaid reasons, the writ appeal is allowed vacating the impugned judgment and remitting Writ Petition (S) No. 2955 of 2011 to be decided *de novo* alongwith Writ Petition (S) No. 2725 of 2015 untrammelled by anything stated in this judgment which is now being set aside, however, preserving the effect of the judgment rendered by the Division Bench in the earlier round through Writ Appeal No. 55 of 2008.

Sd/-
(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-
(Sharad Kumar Gupta)
Judge