

HIGH COURT OF CHHATTISGARH AT BILASPURWPS No. 1940 of 2009

Rajendra Kumar Verma S/o Late Durga Charan Verma, aged 65 years,
Retired Lecturer, R/o 42/700, Ashok Nagar, Seepat Road, Sarkanda,
Bilaspur.

---Petitioner

Versus

1. State of Chhattisgarh, Through Secretary, Department of Public Education, D.K.S.Bhawan, Secretariat, Raipur.
2. The Director, Public Instructions, State of C.G., Ekikrit Shiksha Parisar, Pension Bada, Raipur (C.G.).
3. The Pension Redressal Committee through its Member Secretary, Govt. of Chhattisgarh, General Administration Department, D.K.S. Bhawan, Secretariat, Raipur.

---Respondents

For petitioner	:	Shri Gagan Tiwari on behalf of Shri Rajeev Shrivastava, Advocate.
For State	:	Shri Ashutosh Pandey, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

06/08/2018

1. The challenge in the present Writ Petition is to the order Annexure-P/1 dated 03/02/2009 whereby the petitioner has been communicated of the decision by the High Power Committee constituted by the State Government for redressal of the retiral dues and pensionary benefits dated 06/01/2009.
2. The facts leading to the filing of the present Writ Petition is that, the petitioner initially was appointed as a Lecturer of Surajmal Higher Secondary School, Bilha, District Bilaspur with effect from 27/12/1976. However,

subsequently, the services of the petitioner was demoted vide order dated 05/07/1977 on the post of Upper Division Teacher.

3. This order of demotion was put to challenge in a civil suit by the petitioner vide civil suit No. 17-A/82.

4. The said civil suit stood allowed vide judgment and decree dated 05/04/1985 whereby the order of demotion dated 05/07/1977 has been quashed by the civil court.

5. Meanwhile, there was a development which took place i.e. the school which was a private school earlier was taken over by the State Government with effect from 12/02/1986.

6. The petitioner continued to discharge his duties as an Upper Division Teacher and retired from services on 30/11/1996.

7. Subsequent to his retirement, the petitioner preferred a petition before the State Administrative Tribunal under Section 19 seeking for relief of absorption so also for grant of the salary and other benefits payable to the post of Lecturer including retiral dues with interest @ 18% from the date of appointment as a Lecturer i.e. from 27/12/1976.

8. The said OA subsequent to the abolition of the Tribunal stood transferred to the High Court and the matter was thereafter registered as WPS No. 3282/2005.

9. The said Writ Petition finally stood disposed off on 27/06/2008 wherein this Court disposed off the Writ Petition directing the matter of the petitioner

to be placed before the Committee constituted for redressal of the retiral dues and pensionary benefits of a retired employee.

10. Pending the Writ Petition before this High Court, the State Government had already issued an order on 12/05/2003 absorbing the services of the petitioner with the State Government with effect from 12/05/2003. However, the absorption was done on the post of Upper Division Teacher. The order of absorption was with effect from 12/02/1986 i.e. the date on which the schools were taken over by the State Government.

11. The grievance of the petitioner now left is that, the petitioner since was substantively appointed as a Lecturer and the subsequent order of demotion having been set-aside/quashed by the civil court by a decree dated 05/04/1985, the petitioner for all practical purposes has to be considered as a Lecturer and not as an Upper Division Teacher as has been held by the respondents.

12. It is further also the contention of the counsel for the petitioner that, the respondents have not taken into account the effect of the decree which the petitioner has in his favour and it only has taken the post on which the petitioner was holding by virtue of an order of demotion dated 05/07/1977.

13. According to the counsel for the petitioner, since the order of demotion dated 05/07/1977 has been set-aside/quashed by the civil court in the civil suit, the petitioner for all practical purposes have to be treated as Lecturer and he should have been granted the benefit in this regard while the order of absorption was issued.

14. The State counsel however opposing the petition submits that, the petitioner has been absorbed in the year 2003 that itself is much after the retirement of the petitioner and till the date of retirement, the petitioner was substantively discharging his duties of Upper Division Teacher and therefore the absorption has been made on the post of Upper Division Teacher and the petitioner cannot have any grievance in this regard and thus prayed for rejection of the Writ Petition.

15. Having heard the contentions put forth on either side and on perusal of record, particularly the reply of the State Government wherein they have accepted the fact that, the petitioner was initially appointed as a Lecturer and was subsequently demoted vide order dated 05/07/1977.

16. It is also not in dispute that the order of demotion has been set-aside by the civil court in civil suit No. 17-A/82 vide judgment and decree dated 05/04/1985 and therefore as a consequence of the decree being in favour of the petitioner, it would be a case where the order of demotion was never in existence and the petitioner has to be treated as a Lecturer.

17. The State in its reply is totally silent so far as the effect of decree is concerned in favour of the petitioner. Neither has the respondents ever held that the petitioner cannot be construed as a Lecturer or cannot be granted benefits of Lecturer.

18. Under the circumstances this Court is of the opinion that, the order of the Committee firstly is bad in law to the extent of rejecting the claim of the petitioner for the reason that, the nature of dispute raised by the petitioner was something which was not within the domain of the Committee which

could have only decided only so far as the retiral-cum-terminal benefits which the petitioner would be entitled for. Whether his services has to be absorbed as a Lecturer or not is not within the realm of the Committee or the power vested with the Committee. The impugned order is bad in law on this ground.

19. Once when there is an order of appointment of the petitioner as a Lecturer and the subsequent order of demotion has been set-aside by the Competent Court of law, the petitioner has to be considered as a Lecturer not as an Upper Division Teacher.

20. Thus, the finding of the Committee is on this ground also not sustainable and the same deserve to be and is accordingly set-aside.

21. It is directed that the respondent No.2 who has passed an earlier order of absorption dated 12/05/2003 to pass a fresh order considering the claim of the petitioner for been absorbed as a Lecturer instead of an Upper Division Teacher.

22. Let the respondent No.2 take a prompt decision in this regard preferably within a period of 60 days from the date of communication of the order and the respondent No.2 shall also further issue necessary instructions for the release of the difference of retiral dues which the petitioner would be entitled for between the post of Upper Division Teacher and that of the Lecturer.

23. The Writ Petition accordingly stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
JUDGE