

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 4296 of 2013

Meenakshi Jaiswal W/o Brijesh Kumar, aged about 35 years, working on the post of Assistant Professor, Pharmacy, Guru Ghasidas University, Koni, Bilaspur, R/o Plot No.08, Phase-2, Radhika Vihar, Seepat Road, Bilaspur, Police Station Sarkanda, Tahsil & District Bilaspur (C.G.).

---Petitioner

Versus

1. Guru Ghasidas Central University, through its Registrar, Koni, Bilaspur, District Bilaspur (C.G.).
2. Executive Council, Guru Ghasidas Central University, Koni, Bilaspur (C.G.).
3. University Grant Commission, Through its Secretary, Bahadurshah Zafar Marg, New Delhi – 110002.

---Respondents

WPS No. 233 of 2014

Dr. Sunil Kumar Singh S/o Late Shri Balram Singh, aged about 51 years, R/o Laxmi Niwas, Old Sarkanda, Bilaspur, Police Station and Post Sarkanda, Civil and Revenue District Bilaspur (C.G.).

---Petitioner

Versus

1. Guru Ghasidas Vishwavidyalaya, Bilaspur, through its Registrar, Guru Ghasidas Vishwavidyalaya, Bilaspur, Police Station and Post Koni, District Bilaspur (C.G.).
2. Vice Chancellor, Guru Ghasidas Vishwavidyalaya, Bilaspur, Police Station and Post Koni, District Bilaspur (C.G.).
3. Chairman of Executive Council, Guru Ghasidas Vishwavidyalaya, Bilaspur, Police Station and Post Koni, District Bilaspur (C.G.).
4. University Grant Commission, through Secretary, University Grant Commission, Bahadur Shah Jafar Marg, New Delhi – 110002.

---Respondents

WPS No. 4362 of 2013

Chhatrapal Dewangan S/o B.L.Dewangan, aged about 45 years, R/o Minocha Colony, Bilaspur, Police Station and Post Civil Lines, Civil and Revenue District Bilaspur (C.G.).

---Petitioner

Versus

1. Guru Ghasidas Vishwavidyalaya, Bilaspur, through its Registrar, Guru Ghasidas Vishwavidyalaya, Bilaspur, Police Station and Post Koni, District Bilaspur (C.G.).
2. Vice Chancellor, Guru Ghasidas Vishwavidyalaya, Bilaspur, Police Station and Post Koni, District Bilaspur (C.G.).
3. Chairman of Executive Council, Guru Ghasidas Vishwavidyalaya, Bilaspur, Police Station and Post Koni, District Bilaspur (C.G.).
4. University Grant Commission, through Secretary, University Grant Commission, Bahadur Shah Jafar Marg, New Delhi – 110002.

---Respondents

WPS No. 4440 of 2013

Smt. Beaula Nath W/o Shri Aseem Nath, aged about 38 years, Working on the post of Assistant Professor, R/o Near Mission Boy's Hostel Jarhabhata, PS Civil Line, Tehsil & District Bilaspur (C.G.).

---Petitioner

Versus

1. Guru Ghasidas Central University, through its Registrar, Koni, Bilaspur, District Bilaspur (C.G.).
2. Executive Council, Guru Ghasidas Central University, Koni, Bilaspur (C.G.).
3. University Grant Commission, Through its Secretary, Bahadurshah Zafar Marg, New Delhi – 110002.

---Respondents

WPS No. 4438 of 2013

Sanjay Kumar Lanjhiyana S/o S. Lanjhiyana, aged about 37 years, working on the post of Assistant Professor (Pharmacy), Guru Ghasidas University, Koni, Bilaspur, R/o 97/II, Geetanjali City, Behatarai Road, behind SECL, Bilaspur, Police Station Sarkanda, Tahsil & District Bilaspur (C.G.).

---Petitioner

Versus

1. Guru Ghasidas Central University, through its Registrar, Koni, Bilaspur, District Bilaspur (C.G.).
2. Executive Council, Guru Ghasidas Central University, Koni, Bilaspur (C.G.).
3. University Grant Commission, Through its Secretary, Bahadurshah Zafar Marg, New Delhi – 110002.

---Respondents

WPS No. 4439 of 2013

Kedar Prasad Meena S/o Harsahay Meena, aged about 38 years, working on the post of Assistant Professor (Pharmacy), Guru Ghasidas University, Koni, Bilaspur, R/o B-191, Rama Green City, Seepat Road, Bilaspur, Police Station Sarkanda, Tahsil & District Bilaspur (C.G.).

---Petitioner

Versus

1. Guru Ghasidas Central University, through its Registrar, Koni, Bilaspur, District Bilaspur (C.G.).
2. Executive Council, Guru Ghasidas Central University, Koni, Bilaspur (C.G.).
3. University Grant Commission, Through its Secretary, Bahadurshah Zafar Marg, New Delhi - 110002.

---Respondents

For respective petitioners	:	Shri Manoj Paranjpe, Shri D.K.Swain and Shri Mateen Siddiqui, Advocates.
For respective respondents	:	Shri K.A.Ansari, Sr.Advocate, Shri Vipin Singh, Shri R.S.Baghel and Shri S.S.Rajput, Advocates.

Hon'ble Shri Justice P. Sam Koshy

C.A.V. Order

Delievered on 18/05/2018.

1. Since the facts and grounds of challenge in all the Writ Petitions are identical, all these Writ Petition are being disposed off by this common judgment.
2. The challenge in the present Writ Petition is to the action on part of the respondents No.1 & 2 who have constituted a selection committee to consider the case of each of the petitioners for regularization of their services. The challenge also is to the impugned order Annexure-P/1 dated 12/12/2013 whereby the petitioners have been found to be ineligible for regularization on the post against which they are working and it was also

ordered that they shall be relieved from service of the respondents with three months of salary in lieu of notice.

3. By virtue of the interim protection granted by this Court all the petitioners continue to discharge duties under the respondents No. 1 & 2. All these petitioners have challenged the order dated 12/12/2013 passed by the Acting Registrar of the respondent/University whereby these petitioners have been held not found eligible for regularization.

4. The stand of the petitioners is that an advertisement was issued in the year 2002 for appointment on different posts including lecturer. Since the petitioners were qualified and fulfilled the eligibility criteria, they applied and participated in the selection process and on being successful, they were called in for the interview. The petitioners also having performed well in the interview were offered with the appointment order on 04/11/2002. On the basis of the order of appointment, the petitioners joined their services as lecturer.

5. Initially the services were under probation for a period of 2 years. On successful completion of probation period, the services of the petitioners stood confirmed on the post of lecturer and after the implementation of 6th pay commission, the post of lecturer stood classified as Assistant Professor.

6. The appointment of the petitioners were made on the recommendation of the selection committee constituted under Section 49-2 of the Chhattisgarh Vishwavidyalaya Adhiniyam, 1973.

7. Meanwhile, the University Grant Commission (In short "UGC") on 14/09/2010 in response to a letter dated 07/07/2010 granted additional

sanction of 109 teaching posts including 10 professor, 31 associate professor, 68 assistant professor and while granting the approval for the additional teaching posts, it was ordered by the UGC that these persons should be regularized against the sanction position after they fulfilled the required qualification and are found fit in the selection procedure conducted through a duly constituted selection committee as per the UGC regulations.

8. However, the selection committee constituted by the University called upon the petitioners also for the selection process for regularization of their services. A few of the petitioners did participate and subsequently the impugned order Annexure-P/1 dated 12/12/2013 has been passed holding the petitioners not found eligible for regularization. It was also ordered that their services stood relieved with immediate effect and they would be entitled for 3 months of salary. It is this action of the University which is under challenge.

9. The main contention of the counsel for the petitioners is that, initially the appointment of the petitioners were that of the Guru Ghasidas University and that their services were governed under the Statute 31 wherein there was a separate condition of services enacted.

10. The respondent/University stood upgraded into a Central University vide notification of the Government of India dated 28/03/2009 declaring the respondent/University to be a Central University with effect from 15/01/2009 onwards and thereafter the provisions of University Act 2009 (In short "Act of 2009") came into force.

11. According to the petitioners, since the order of appointment of the petitioners were issued by the Guru Ghasidas University and their services also was confirmed by the same University under the then prevalent provision of law or the condition of service, the petitioners can not be subjected to a fresh selection process, nor could the petitioners be subjected to scrutiny for regularization of their services for the second time.

12. According to the petitioners, the services of the petitioners stood protected by virtue of Section 4 of the Act of 2009.

13. According to the petitioners, since the services of the petitioners stood confirmed much before the respondent/University got upgraded as a Central University and also much before the Act of 2009 came into force. The conditions stipulated in the letter of UGC dated 14/09/2010 would not had been applicable upon the petitioners whose services stood already confirmed under the earlier management i.e. Guru Ghasidas University.

14. It was further contended that the letter dated 14/09/2010 of UGC was only in respect of the additional teaching positions which were approved by the UGC.

15. According to the petitioners, the contents of the letter dated 14/09/2010 by itself makes it evident that the condition stipulated therein were confined to the 109 fresh teaching positions approved by the UGC. That so far as the reference of posts which have been held by the petitioners that was only for citing the total sanctioned teaching posts in the respondent/University. That it never intended the petitioners also to be subjected to a fresh selection process for being appointed or regularized into service of the respondent.

16. The counsel for the petitioners referred to the correspondence obtained under the Right to Information Act. The first being a letter seeking certain clarification of the letter dated 14/09/2010 issued by UGC as to whether the process for regularization would be applicable to those teaching position who had already been working under the Guru Ghasidas University and whose services stood confirmed also.

17. The said information was sought vide application dated 30/12/2013 to which the UGC vide letter dated 22/01/2011 replied categorically stating that the condition stipulated in the letter of UGC dated 14/09/2010 would be applicable only for the 109 additional post approved and would not be applicable to the persons already working with the University.

18. It was further the contention of the petitioners that the Annexure-P/2 dated 14/09/2010 of UGC would also clearly reflect that the petitioners status already was reflected in the said chart against the approved teaching positions available in the department and that their status were not to be clubbed with the 109 additional teaching positions approved by the UGC.

19. It was also the contention of the petitioners that the petitioners case could not have been discriminated on the ground of they allegedly being appointed under the self-finance scheme as would also be clear from the information provided by the UGC whereby it had made it clear that it would be UGC which would bare the entire cost of teaching faculties in the respondent/University and which included the petitioners also.

20. The petitioners further referred to the notesheet available in the respondent establishment whereby the University had undertaken the

exercise of processing the credentials of the existing employees and another notesheet dated 08/12/2012 enclosed as Annexure-P/20 with the Writ Petition. It would reveal that 5 out of 6 petitioners i.e. barring the petitioner in WPS No.4362/2013, all the petitioners were found eligible and fulfilled the eligibility criteria fixed by the UGC.

21. Referring to Section 4-D of the Act, 2009, the petitioners contended that since they were employed under Guru Ghasidas University and were appointed prior to the commencement of the Act, 2009, they would be entitled for the same rights and privileges which they were enjoying under Guru Ghasidas University. Likewise, the petitioners also referred to Section 45(2)(a) of the Act, 2009, which itself envisages the protection of appointment made and privileges granted under the Vishwavidyalaya Adhiniyam, 1973 (in short, the Adhiniyam, 1973) shall be deemed to have been made under the corresponding provisions of the Act, 2009.

22. Referring to aforesaid provisions, the counsel for the petitioners drew attention of the court to the order of appointment and the order of confirmation passed in favour of the petitioners. The orders having been passed by the competent authorities under Guru Ghasidas University, the subsequent consideration of the petitioners for regularization itself was totally uncalled for as their services already stood confirmed by Guru Ghasidas University itself way-back in the year, 2008 itself. It was also the contention of the petitioners that perusal of gradation list as it existed prior to the Act, 2009 coming into force would itself show that all the petitioners were reflected as regular employees. Therefore, subsequent consideration

of the petitioners for regularization is totally uncalled for and sought for quashment of the action of the respondents so far as holding the petitioners not found eligible for regularization and discontinuing them from service.

23. Per contra, learned counsel for the respondent-University opposing the petition submits that the writ petition itself at the outset may not be maintainable for the reason that the impugned order Annexure P/1 has been passed on the basis of resolution passed by the Executive Council and until and unless the resolution of the Executive Council is challenged, the only challenge to the impugned order which was a consequential order to the resolution may not suffice. According to him, since Guru Ghasidas University had been upgraded as Central University, it was incumbent upon the University to ensure that all the appointments and regularizations made in the University were in accordance with Rules and Regulations applicable in the University particularly the recruitment and conditions of services rules. The order dated 14.09.2010 issued by the UGC was pursuant to letter dated 07.07.2010 issued by the respondent-University. That, as a query to the said letter dated 07.07.2010, the respondents had communicated to the University authorities the procedure to be applied and conditions to be ensued while regularizing 121 teaching positions in the University.

24. According to respondent, so far as 109 additional teaching positions that have been approved are concerned, those are for fresh appointments and regularization cannot be of a fresh appointee. Regularization of fresh recruit is not permissible. Regularization on the post is always of a person who has been appointed temporarily or on probation. That, the process for

regularization has been initiated only as per the directions given by the UGC vide letter dated 14.09.2010 and which was meant for the petitioners and other persons similarly placed in the department and who have all been subjected to regularization process and most of whom have already been found eligible for regularization except for the petitioners.

25. It was further contention of the respondents that confirmation is different thing and regularization is entirely different thing. The petitioners were appointed under the self financing scheme and therefore the status of the petitioners cannot be equated with the other regular, permanent and confirmed teachers working under Guru Ghasidas University.

26. For the aforesaid reasons, the so called protection claimed by the petitioners under Sections 4-D as well as 45(2)(a) of the Act, 2009 would not come to the aid or rescue of the petitioners. It was also the contention of the counsel for the respondents that the writ petition also is not maintainable on the ground of there being a statutory alternative remedy available to them. Sections 33, 34 and 35 of the Act, 2009 deals with alternative remedy available to the persons aggrieved by the action of the University, therefore, the petition may be disposed of directing the petitioners to prefer an appeal with further direction to the appellate authority to decide the appeal at the earliest.

27. It was mainly contended by the respondents that there is a difference between the appointment and the regularization. So far as 109 posts are concerned, that was to be filled up by way of fresh recruitment whereas, the

regularization can be done only in respect of existing teaching positions.

Thus, for all these reasons prayed for rejection of the petition.

28. Having heard the contentions put forth on either side and on perusal of records what clearly reflects from the documents which have been enclosed with the writ petition is that all the petitioners before this court had an order of appointment issued by the Registrar (Kulsachiv) and the order of confirmation also was issued by Guru Ghasidas University and the appointments have been made invoking the provisions of Section 49 of Chhattisgarh University (Amendment) Act, 2002. The order of appointment also reflects that there was a duly constituted selection committee which undertook the selection process before the order of appointment to each of the petitioners were issued. What is further to be seen is that as the initial order of appointment reflected the appointment to be on probation for a period of two years, in due course of time on completion of probation period, the same authority who had issued order of appointment, again issued an order in favour of the petitioners confirming their services and in the process the petitioners became permanent employee of Guru Ghasidas University.

29. At this juncture it would also be necessary to refer to the document dated 07.07.2010 which was the basis for issuance of the letter dated 14.09.2010. For ready reference, the contents of said letter dated 07.07.2010 is reproduced hereinunder-

**“Kindly refer to your D.O. No.F-39-1/2009 (CU) dated
30.06.2010. As desired, enclosed please find herewith
the required information duly filled in the prescribed**

format sent by you for additional requirement of teaching positions against XI Plan allocation. Kindly look into the matter on priority basis so as to release the sanction of faculty positions at your earliest. This is important for the smooth academic functioning in the University.”

30. At the same time, if we look at the enclosures enclosed with the said letter dated 07.07.2010, it would reveal that the status of the petitioners were reflected in the said document against the existing teaching positions who already stood confirmed/approved by the then University.

31. So far as the letter of the UGC dated 14.09.2010 is concerned, admittedly the same was in response to the letter issued by the then Vice Chancellor on 07.07.2010. If we read the enclosures attached with the letter of the Vice Chancellor dated 07.07.2010, it would reveal that the Vice Chancellor then had sought for formal approval/sanction of the additional requirement of teaching position against 11th plan allocation and the request was made for releasing the sanction of faculty position at the earliest. The documents also reveal the then existing strength of teaching positions, the number of vacant position and also the requirement while showing the filled up strength of the teaching position. The positions occupied by the petitioners were also disclosed and reflected as regular teaching position.

32. For better understanding of the contents of the letter dated 14.09.2010 it would be relevant to consider the first two paragraphs of the said letter which for ready reference is reproduced hereunder:

“This is in reference to your letter No. V.C./P.A./2010/390 dated 7th July, 2010 regarding the approval of additional teaching positions. The proposal of the University has been examined in UGC in view of the intake capacity for first year, total intake capacity for course, total number of students admitted during 2009-10, existing workload for teaching staff in the department, existing teacher-student ratio. On the basis of these parameters, I am directed to convey the approval of 109 additional teaching positions (10 Professor, 31 Associate Professor, 68 Assistant Professor). This includes 18 posts sanctioned vide this office letter No. F.24-36/2009(CU) dated 26.06.2009 as per details enclosed in Annexure.

The approval of additional teaching positions is subject to the following:-

(i) The 121 sanctioned teaching positions (15 Professors, 29 Associate Professors, 77 Assistant Professors) as approved by the Executive Council as informed by the University is being regularized and to be treated as sanctioned teaching positions in addition to the 109 teaching positions now recommended by UGC subject to the conditions that these teachers should be regularized against the sanctioned positions

after fulfilling the required qualification and selection procedure through duly constituted Selection Committee as prescribed in the UGC Regulation.”

33. If we consider the aforesaid contents of the letter, it would make things somewhat clear in as much as what was meant by the said letter, was that the UGC has formally approved the existing work force of the teaching staff and which included the petitioners. In addition, what was also meant by the UGC was that considering the existing teacher-student ratio it conveyed the approval of 109 additional teaching positions. Further what is also evident is that the consideration of the conditions stipulated in the later part of the letter dated 14.09.2010 was again only in respect of 109 additional teaching positions which were approved by the UGC as is evident from the following terms reflected there “The approval of additional teaching positions is subject to the following”

34. This by itself would reflect that the further conditions which were envisaged in the said document was not supposed to be applied upon the already existing teaching staffs and who had been working with the respondents for long including the petitioners.

35. Now to further strengthen the aforesaid position it would be relevant to take note of the enquiry made under Right to Information Act from the UGC vide Annexure P-12 wherein information was sought as to whether the condition no.1 envisaged in the letter dated 14.09.2010 would be applicable to 121 already sanctioned occupied posts or it would be applicable only for 109 additional posts approved. In response to the said query, the UGC had

issued a letter on 22.01.2014 wherein it has been categorically informed that the condition so stipulated would be applicable only to 109 additional posts approved vide letter dated 14.09.2010. This clarificatory information provided by the UGC should have settled all the disputes and doubts which were running through the minds of the university authorities.

36. So far as the status of the petitioners being one under Self Finance Scheme is concerned, in the opinion of this Court the same would not make much difference as they were otherwise also appointed after undergoing due process of law by the university authority. Self Financing Scheme is only a factor which would determine the source of funding of these teaching positions. It is not that petitioners alone were the members of the self financing scheme and who were also working with the respondents since long. The financial burden for meeting the salary and other allowances to these teaching positions was met from the non plan budget. Apart from this, the recruitment and the recruitment process do not in any manner differ, only because of the appointment being made under the self financing scheme. Moreover, financial implication or poor financial conditions were not the criteria or factors which led to the petitioners being found not eligible for regularization.

37. If we look at the Act of 2009, Section 4 (d) protects the person already employed under Guru Ghasidas University. Sub Section (d) of Section 4 holds that every person employed by Guru Ghasidas Vishwavidyalaya shall hold his office or service in Guru Ghasidas Vishwavidyalaya established under this Act by the same tenure and upon the same terms and conditions

and also with the same rights and privileges. Similar protection also is provided under Clause 45 (2) (9) of the Act of 2009. Undisputedly, the petitioners have been appointed by Guru Ghasidas University and they have also underwent the selection process, in addition, they also fulfill all the requisite eligibility conditions.

38. The Supreme Court recently in the case of Harisingh Gour Vishwavidyalaya v. Surendra Saraf in SLP No. 18342/2013 order dated 26.07.2013 dealing with the service condition of Harisingh University which was subsequently upgraded as a Central University held as under:

“The High Court is thus correct in holding that the statutory right of the respondents under Section 4 (d) of the Act of 2009 could not have been overridden by a resolution of the Executive Council.”

39. It is also worthwhile referring to the Single Bench decision of Madhya Pradesh High Court in the case of Surendra Saraf vs. Dr. Harisingh Gour Vishwavidyalaya (ILR 2011 MP 3037) where in paragraph-12 it has been held as under:

“12. As far as first ground is concerned under the Adhiniyam of 1973 an Executive Council is constituted under Section 23 and the powers of the Executive Council are prescribed under Section 24. The Executive Council is given wide power which includes the entire power to control and administer the property and funds of the University, the power of preparing annual

financial estimate of the University, powers for appointment, creation of posts, prospecting the salary etc.. There is nothing in the Adhinyam of 1973 which warrants that a decision taken by the Executive Council has to be approved by the State Government. Except for contending in the return that the decision of the Executive Council taken on 1.5.2008 has not been approved by the State Government and therefore, cannot be given effect to, respondents are unable to demonstrate before this Court from the statutory provision i.e. Adhinyam of 1973 or any other provision as to how and under what provision of law the resolution of the Executive Council warrants approval of the State Government. When the provision of Section 24 of the Adhinyam of 1973 gives wide power to the Executive Council to take a decision, the decision taken by the Executive Council becomes final and applicable on the date it is taken and for the said purpose no further approval or sanction of the State Government is necessary. Once the Executive Council took a decision on 1.5.2008 for granting benefit to the petitioners, the same becomes a service condition of the petitioners and by virtue of Section 4(d) of the Act of 2009 the terms and conditions of appointment which were existing on

1.5.2009 i.e. prior to 20th March 2009 could not be changed. When the resolution was passed by the Executive Council of the University on 1.5.2008 it became a service condition for the petitioners and a right, legal and vested in nature accrued to the petitioner, it became the terms and condition for the contract of service and once the service condition/contract was laid down by the Executive Council of the University under the Adhiniyam of 1973 by virtue of right available to the petitioners under Section 4(d) of the Act of 2009 the service condition could not be changed. The University which came into existence after 20th March, 2009, under law was duty bound to protect the right of the petitioners which accrued to them by virtue of decision taken by the Executive Council on 1.5.2008 and therefore, in refusing to granting the aforesaid benefit, respondents have committed an error and to that effect benefit can be granted to the petitioners.”

40. A plain reading of the aforesaid view of the Madhya Pradesh High Court forces this Court to draw the conclusion that the service conditions of each of the petitioners herein since they were appointed by the Guru Ghasidas University shall remain protected in view of section 4 (d) of the Act of 2009 unless they stand altered by the statutes.

41. Thus in view of the fact that the service conditions of the petitioners stood protected in view of Section 4 (d) of the Act of 2009, right stands accrued in favour of the petitioners so far as their appointment and confirmation having been done by Guru Ghasidas University. The petitioners again need not be subjected to the process for regularization. Moreover, the order dated 14.09.2010 which was the basis upon which the petitioners were required to undergo the selection process for regularization was in fact not meant for the petitioners or similarly placed persons whose services were already approved and sanctioned by the UGC. The document Annexure P-13 dated 22.01.2014 issued by the UGC itself confines the requirement of the selection process to only 109 additional teaching positions approved by the UGC and not to the existing teaching positions. The action of the respondents in subjecting the petitioners to regularization for the second time and holding them to be not found eligible thus is uncalled for and bad in law.

42. For all the aforesaid reasons the order Annexure P-1 dated 12.12.2013 being not sustainable deserves to be and is accordingly set aside. As a consequence, the petitioners would be deemed to be regular teaching staff of the University and whose appointment stands protected under the provisions of Section 4 (d) of the Act of 2009.

43. The writ petitions thus stand allowed with consequences to follow.

Sd/-

(P. Sam Koshy)
JUDGE

Sumit