

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 5496 of 2016**

1. Ashok Kumar Gupta S/o Shri Dayashankar Gupta, Aged About 58 Years Occupation Asst. Professor, R/o Sardar Patel Ward, Mungeli, District Mungeli Chhattisgarh, Chhattisgarh
 2. Dr. Sajal Kumar Tripathi, S/o. Shri S. P. Tripathi, Aged About 48 Years Occupation Asst. Professor Commerce, R/o Ramgopal Tiwari Ward, Mungeli, District Mungeli Chhattisgarh, District : Mungeli, Chhattisgarh
 3. Md. Moein Khan, S/o. Late Md. Bashir Khan, Aged About 49 Years Occupation Asst. Professor Economics, R/o Ambedkar Ward Mungeli, District Mungeli Chhattisgarh, District : Mungeli, Chhattisgarh
 4. Jay Prakash Upadhyay, S/o Late Shri G. L. Upadhyay, Aged About 48 Years Occupation Asst. Professor Sociology, R/o Padav Chowk, Mungeli, District Mungeli Chhattisgarh , District : Mungeli, Chhattisgarh
 5. Umesh Kumar Sharma S/o Late Daulat Ram, Aged About 43 Years Occupation Asst. Professor Commerce, R/o Subhash Ward, Mungeli, District Mungeli Chhattisgarh , District : Mungeli, Chhattisgarh
 6. Dr. M. K. Mishra, S/o Late Shri B. P. Mishra, Aged About 45 Years Occupation Asst. Professor Geography, R/o Sai Vihar Colony, Mungeli, District Mungeli Chhattisgarh , District : Mungeli, Chhattisgarh
 7. Dr. Mamta Mishra, W/o. Dr. N. K. Mishra, Aged About 46 Years Occupation Asst. Professor Geography, R/o Sai Vihar Colony, Mungeli, District Mungeli Chhattisgarh, District : Mungeli, Chhattisgarh
 8. Pradeep Pandey, S/o. Late Shri Dhaniram Pandey, Aged About 46 Years Occupation Asst. Professor Computer, R/o Sardar Patel Ward, Mungeli, District Mungeli Chhattisgarh, District : Mungeli, Chhattisgarh
 9. R. K. Verma S/o. Shri R. K. Verma, Aged About 53 Years Occupation Office Assistant, R/o Old Bus Stand, Mungeli, District Mungeli Chhattisgarh , District : Mungeli, Chhattisgarh
 10. R. K. Yadav S/o Shri Siyaram Yadav, Aged About 35 Years Occupation Office Assistant R/o Padav Para, Mungeli, District Mungeli Chhattisgarh , District : Mungeli, Chhattisgarh
 11. Prahlad Bais S/o Shri Shatrughan Bais, Aged About 34 Years Occupation Office Assistant, R/o Kalimai Ward, Mungeli, District Mungeli Chhattisgarh , District : Mungeli, Chhattisgarh
 12. B. K. Upadhyay S/o Late Shri G. L. Upadhyay, Aged About 43 Years Occupation Lab Technician, R/o Padav Para, Mungeli, District Mungeli Chhattisgarh , District : Mungeli, Chhattisgarh
- Petitioners**

Versus

1. The State Of Chhattisgarh Through Its Secretary, Department Of Higher Education Mantralaya, Mahanadi Bhawan, Naya Raipur Chhattisgarh, Chhattisgarh

2. The Commissioner, Higher Education, Indrawati Bhawan, Raipur, District Raipur Chhattisgarh, District : Raipur, Chhattisgarh
3. The Principal, S. N. G. College, Mungeli, District Mungeli Chhattisgarh , District : Mungeli, Chhattisgarh
4. The Governing Body Of S. N. G. College, Through Its Chairman/ Secretary, S. N. G. College, Mungeli, District Mungeli Chhattisgarh , District : Mungeli, Chhattisgarh

....**Respondents**

For Petitioners No.1,3 to 12	:	Mr. R.K. Kesharwani, Advocate
For Petitioner No.2	:	Mr. Vicky John, Advocate
For State/Respondents No.1 to 3	:	Mr. Dhiraj Wankhede, G.A.
For respondent No.4	:	Mr. Vikas Pandey, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

18.01.2018

1. The petitioners have filed this petition aggrieved by order dated 24.08.2016 (Annexure P/1) in which it was directed to terminate the services of the teachers and employees.
2. With the consent of the parties, the matter is heard and disposed off finally.
3. Learned counsel for the petitioners would submit that in the matter of absorption of teaching and non-teaching staff of a private college which has been taken over by the Government, the statutory provision as contained in M.P./C.G. Educational Service (Collegiate Branch) Recruitment Rules, 1990 (for short 'the Rules of 1990') and Chhattisgarh Non-Gazetted Class-III Service (Collegiate Branch) Recruitment and Promotion Rules, 1974 (hereinafter referred to as 'the Rules of 1974') would hold the field and unless the petitioners' cases are scrutinized/ screened in accordance with the provision contained in Rule 14 (Recruitment by Absorption) of the Rules of 1990 and the Rules of 1974, the services could not be terminated. It is the case of the petitioners that they are eligible for being absorbed.
4. Referring to averments made in para 12, 13 & 16 of the return, learned State counsel would submit that the order passed by the Government, in its true spirit, only directed for considering and screening in accordance with the Rules and not for termination without such screening as required under Rule 14 of the Rules of 1990 and the Rules of 1974. He would submit that the cases of each and every petitioners shall be scrutinized by duly constituted Screening Committee as provided under Rule 14 of the Rules of 1990 and Rules of 1974 and then only a decision with regard to eligibility of absorption would be

taken and order would be passed.

5. In the matter of absorption of teaching staff of a private college which has been taken over by the Government, Rule 14 of the Rules of 1990 provides as below :

“14. Recruitment by Absorption -(i) The absorption of Principals, Professors, Asstt. Professors Librarian and Sports Officers of non-government colleges taken over by the Government will be made through Screening Committee, after examining every case and on its recommendations to the Government. The Committee shall be comprising of the following members:-

(a) Chairman, Public Service Commission or a member of the Commission, nominated by the Chairman;

(b) Principal Secretary/ Secretary, Higher Education;

(c) Commissioner, Higher Education, Madhya Pradesh;

(d) Two Principals of Government Post Graduate Colleges, nominated by the Government.

(ii) The Screening Committee shall recommend the cases referred to it for absorption to appropriate posts on the following basis :-

(A) All those persons, who were recruited as a regular appointee in the private colleges taken over by the Government according to the provisions given in the college code of the concerning Universities prior to the commencement of the Madhya Pradesh Uchch Shiksha Anudan Ayog;

(B) No such person shall be absorbed who is recruited after the commencement of the Madhya Pradesh Educational Service (Collegiate Branch) Recruitment Rules, 1967 and does not fulfill the minimum requirements prescribed in the said rules;

(C) No person shall be absorbed if at any time in the past he or she was removed or dismissed from Government or any other service for proved misconduct and/or criminal offence;

(D) No person shall be absorbed in Government Service if he or she has attained the age of superannuation according to the Government rules in force at the time of absorption;

(E) No person appointed as or holding the post of a Registrar, or a Librarian or a Sports Officer, in a non-government college taken over by the State Government, shall be absorbed in Government Service, unless at the time of appointment, such person answers such minimum requirements or holds such qualifications as may be laid down by the State Government by an order in writing;

(F) No person shall be absorbed in Government Service whose appointment is not approved as a regular appointment by Madhya Pradesh Uchcha Shiksha Anudan Ayog or the University as the case may be;

(iii) (A) No person shall be absorbed in a higher post in Government Service from the post on which he was working prior to the take over of the college by Government.

(B) For being absorbed as Principal of a Degree College, a person working as Principal of a college taken over by Government shall, in addition to the other conditions prescribed under this Rule have a minimum of 14 years teaching experience out of which 3 years teaching experience shall pertain to teaching of post graduate classes and two years teaching experience as a Professor, for absorption to the post of Principal Post Graduate College, a further experience of two years of working as a Principal of a Degree College shall be necessary.

(iv) The Screening Committee, after taking into consideration the relevant provisions of this rule shall make suitable recommendations to Government. After the recommendations of the Committee are approved by Government, the absorption orders of the concerning persons will be issued by Government according to the recommendations of the Committee.

(v) A person absorbed to a particular post shall get his seniority from the date the college was taken over.

(vi) No leave shall be permitted to be carried forward by a person working in a non-government college on his absorption in Government service. However, if such a person pays the leave salary contribution in respect of the service rendered in a non-government college, he shall be permitted to carry forward the leave so earned subject to the restrictions and maximum limits prescribed in the Madhya Pradesh Leave Rules.

(vii) No person absorbed into Government service under the provision of this Rule shall by virtue of the fact that he was earlier confirmed in service by

the non-government college claim as of right to be confirmed in Government service. Confirmation of such person shall be done in accordance with the Government rules in force from time to time.

(viii) the provisions of these rules shall be and shall always be deemed to have come into force with effect from the 1st January, 1971.

(ix) The principal, Professor, Asstt. Professor, Librarian and Sports Officer of the non-government college, taken over by the Government whose appointments were approved as a regular appointment by Madhya Pradesh Uchcha Shiksha Anudan Ayog or the University, as the case may be, but are rejected by the Screening Committee for their absorption in Government Service due to any reason, will continue on the post, they held on ad hoc and temporary basis in dying cadre, but will not get any benefit of seniority, promotion, annual increments and revision of pay-scale in Government Service as such."

6. Similarly, in respect of petitioners No.9 to 12 who are Office Assistants and Lab Technician and thus belonging to Collegiate Branch Non Gazetted Class-III Service, respondent-State has come out with the case that their cases would require scrutiny under the Rules of 1974 and without such scrutiny no action would be taken. For this purpose also, it is stated that appropriate Committee would be constituted which will make proper recommendation with regard to the eligibility and entitlement of petitioners No.9 to 12.

7. It is, therefore, clear that there cannot be any termination of services of the petitioners without following procedure prescribed in Rule 14 of the Rules of 1990 and Rules of 1974. The petitioners had to rush to the Court because the language deployed in the impugned order which gave an impression that the services of the petitioners would be terminated forthwith, there being mention of scrutiny of their cases by the Screening Committee constituted in Rule 14 of the Rules of 1990 and under Rules of 1974.

8. In view of what has now been stated in the return of the State counsel, the impugned order in its present form cannot be sustained and is set aside.

9. It will be open for the respondents to constitute Screening Committee and scrutinize the eligibility of each of the petitioners in the matter of absorption strictly in accordance with the provision contained in Rule 14 of the Rules of 1990 and Rules of 1974, as the case may be. In case any of the petitioners is not found eligible for absorption in future, it will be open for the petitioner / petitioners to take recourse to appropriate remedy as may be available to them under the law.

Sd/-

**(Manindra Mohan Shrivastava)
Judge**