

HIGH COURT OF CHHATTISGARH, BILASPUR

WA No. 558 of 2017

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

---- Appellant

Versus

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

---- Respondents

For Appellant : Shri Prateek Sharma, Advocate
For Respondents/University : Shri Neeraj Choubey, Advocate

**Hon'ble Shri Justice Prashant Kumar Mishra &
Hon'ble Shri Justice Parth Prateem Sahu**

Judgment on Board by Prashant Kumar Mishra, J.

26.03.2019

1) This intra court appeal would call in question the said part of the impugned order whereby while disposing off the writ application the respondent-University was allowed to take fresh decision in the matter of regularisation of the period of suspension.

2) The appellant was working as Director of Distance Education, incharge of Project under supervision of the respondent-University when he was issued a charge-sheet by the University on 20.12.2005 constituting a Departmental Enquiry against him. The said constitution of enquiry was challenged successfully in Writ Petition No.1730 of 2006. This Court eventually quashed the charge-sheet on the ground that the same was not

issued by an appropriate competent authority and thus there was inherent lack of jurisdiction in the authority who issued the charge-sheet. However, this Court also granted liberty to the University to constitute enquiry, if they so desire, in accordance with law.

3) After the above order passed in the first Writ Petition, respondent-University decided not to constitute any fresh enquiry against the appellant as he had already retired during the interregnum. The University instead, passed an order on 05.11.2014 deciding not to allow any other financial benefit to the petitioner/appellant for the period of suspension, over and above the subsistence allowance, already paid to him. This order was passed on the basis of principle of 'no work no pay'. The appellant thereafter, preferred WPS-1845 of 2017 challenging the said order against him on the basis of 'no work no pay'. The present impugned order has been passed in the said Writ Petition holding thus in paragraphs 7 and 8 as below:

“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.”

4) It is argued that once learned Single Judge, on the basis of decision rendered by Hon'ble Supreme Court in the matter of **Shobha Ram Raturi Vs Haryana Vidyut Prasaran Nigam Limited and others, AIR 2016 SC 157** disposed off the writ petition holding that the principle of 'no work no pay' would not apply, the further order reserving liberty in favour of the University to take fresh decision whether the petitioner should be allowed full salary for the period of suspension or confined only to the suspension allowance already paid to him, should not have been passed.

5) Shri Neeraj Choubey, learned counsel for the University would defend the impugned order on submission that during pendency of the writ petition, the University has taken a decision after an order passed in this writ appeal on 28.02.2018, therefore, appellant should have preferred fresh writ petition. He would also submit that the decision in the matter has been taken under Clause-61 of Statute No.31 of the University which empowers the Executive Council to decide the period of suspension.

6) Having heard learned counsel for the parties, it is to be noticed that in the matter of **Shobha Ram Raturi** (supra), Hon'ble Apex Court had taken a view that when an employee was not permitted to perform his/her duties by an order of the employer, the principle of 'no work no pay' would not apply for the period during which his services were not obtained.

7) In the case at hand also the appellant has already retired and is presently aged about 74 years. The enquiry was commenced against him in the year 2006. It is University's own case as reflected in the note prepared for the Executive Council meeting that the University has decided not to constitute any enquiry against the appellant and yet the finding recorded in the previous enquiry which has already been quashed, has formed the basis for a decision not to allow any other financial benefit to the appellant during the period of suspension over and above, the subsistence allowance already paid to him. When the appellant was not allowed to carry on his duties during the period of suspension on the basis of a charge-sheet which was issued by an incompetent authority, it was not the fault of the appellant in not attending the duties because for the order of suspension, he could not have attended his duties during the relevant period. Clause 61 of Statute No.31 of the University would apply to a case where the University takes a decision of its own at the end of completion of an enquiry but here is a case where the enquiry got quashed by a judicial order, therefore, as a consequence of judicial order, the appellant was entitled for the salary for the period during which he remained under suspension. If the principle of 'no work no pay' would not apply on the basis of judgment rendered in the matter of **Shobha Ram Raturi** (supra), the period of suspension had to be regularised by making payment of the entire salary for the period and counting the said period as the period spent on duty.

8) In view of the aforesaid, the Writ Appeal is disposed off directing the University to pay full salary to the appellant for the period of suspension

because the University itself decided not to constitute an enquiry against the appellant in terms of the order passed in his first Writ Petition No. 1730 of 2014.

9) The University shall pay the remaining part of salary for the period of suspension to the appellant.

Sd/-
JUDGE
(Prashant Kumar Mishra)

Sd/-
JUDGE
(Parth Prateem Sahu)

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