

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WP No. 407 of 2005**

1. Bal Chand Kachhwaha S/o Late Shri Hari Singh Kachhwaha, aged about 68 years. R/o 270, Sunder Nagar, Raipur, Chhattisgarh.
2. S.K. Shinde S/o Shri D.N. Shinde, aged about 67 years, R/o A/162 Sector I Tagore Nagar, Raipur, Chhattisgarh.
3. Mohd. Rafique S/o Shri H.S. Mia, aged about 68 years R/o Byron Bazar Raipur, Chhattisgarh.
4. R.K. Gomasta S/o Shri Sunderlal Gomasta, aged about 67 years, R/o 48/351, Lohar Chowk, Purani Basti, Raipur, Chhattisgarh
5. H.S. Shukla S/o Shri Brijbhushan Shukla, aged about 68 years, R/o Qr. No. 17, Nagar Marg, Near Maharashtra Bhawan Choubi Colony Raipur, Chhattisgarh.
6. S.P. Pandey S/o Shri RamKumar Pandey, aged about 67 years, R/o Ravinagar, Raipur Chhattisgarh.
7. R.K. Pandey S/o Shri Bhuwan Lal Pandey, aged about 66 years, R/o C/13 M.P.H.B. Sector I, Shankar Nagar, Raipur, Chhattisgarh.
8. S.D. Bhartiya S/o Shri Ramlal Bhartiya, aged about 68 years, R/o 25 (Shala Marg) Choubi Colony Raipur, Chhattisgarh.
9. K.K. Ghosh S/o Late S.K. Ghosh, aged about 67 years, R/o Lane No. 4 New Shanti Nagar, Raipur Chhattisgarh.
10. H.C. Jain, aged about 67 years, R/o Chhotapara, Raipur, Chhattisgarh.
11. C.P. Katiya S/o Shri R.P. Katiya, aged about 67 years R/o C/13, Tagore Nagar, Sector 5 Raipur, Chhattisgarh.

----- Petitioners**VERSUS**

1. State of Chhattisgarh, through the Principal secretary, Department of Higher & Technical Education, Man Power Deployment, Science & Technology, D.K.S. Bhawan, Mantralay, Raipur, Chhattisgarh.

2. Commissioner, Higher Education, Government of Chhattisgarh D.K.S. Bhawan, Mantralaya, Raipur, Chhattisgarh.
3. Durga Education Society, Raipur Through President Durga Post Graduate College, Raipur, Chhattisgarh.
4. The Principal, Durga Post Graduate College, Raipur, Chhattisgarh.

----Respondents

WP No. 4057 of 2004

1. Dr. Basant Ram Sahu S/o Late Gopal Sahu, aged about 66 years, R/o R-3 Vinoba Nagar Bilaspur, Chhattisgarh.
2. Dr. Ram Kumar Verma S/o Late Shri Nathu Ram, aged about 66 years R/o B-28 Kranti Nagar, Bilaspur, Chhattisgarh.
3. Hem Narayan Lal S/o Late Brahma Kishore Lal, aged about 66 years R/o E-27, Kranti Nagar Bilaspur, Chhattisgarh.
4. Banshilal Kesharwani S/o Late Shri L.P. Kesharwani, aged about 66 years, R/o 13, Nirala Nagar, (Bus Stand) Bilaspur, Chhattisgarh.
5. Pyarelal Pandey S/o Late Bhuwanlal Pandey, aged about 68 years, R/o Ravi Nagar, Sindhi Colony, Bilaspur Chhattisgarh.
6. Dr. Bohit Ram Sahu S/o Late D.R. Sahu, Aged about 68 years, R/o Deena Niketan Vidya Up Nagar, Bilaspur Chhattisgarh.
7. Dr. Jagat Narayan Dubey S/o Late Nathoo Lal Dubey, aged about 68 years R/o River Side Near Gondpara, Kanji House, Bilaspur, Chhattisgarh
8. Harish Chandra Mansharamani S/o Late Shri Laxmi Chandra, aged about 67 years, R/o A-4 Priyandarshini Nagar, Bilaspur, Chhattisgarh.

----- Petitioners

VERSUS

1. State of Chhattisgarh, through the Principal Secretary, Department of Higher & Technical Education, Man Power Deployment, Science & Technology, D.K.S. Bhawan, Mantralay, Raipur, Chhattisgarh.
2. Commissioner Higher Education, Government of Chhattisgarh D.K.S. Bhawan, Mantralaya, Raipur, Chhattisgarh.

3. C.M. Dubey Shikshan Samiti through Chairman C.M.D. College Bilaspur, Chhattisgarh.
4. The Principal C.M.D. Post Graduate College Bilaspur, Chhattisgarh.

----Respondents

For Petitioners	:	Mr. Pranjal Shukla, Advocate
For State	:	Mr. Saleem Kazi, Dy. A.G.
For respondents 3 to 5	:	Mr. Ashish Shrivastava, Advocate

WP No. 2318 of 2002

Professor Dr. S.C. Shrivastava, aged about 62 years, S/o Shri Ram Pyare Lal Shrivastava Retired Professor Economics, Chhattisgarh.

----- Petitioner

Versus

1. State of Chhattisgarh, Ministry of Higher Education, Through its Secretary, Secretariat, Raipur, Chhattisgarh.
2. The Commissioner, Higher Education, Government of Chhattisgarh Govt. Science College Campus Hostel No. 4, Raipur, Chhattisgarh.
3. C.M.Dubey Shiksha Samiti (Registered), Through-Chairman, Bhagwat Prasad Dubey, S/o Late Shri Gajadhar Prasad Dubey, R/o Sadar Bazar, Bilaspur, Chhattisgarh.
4. Government Body, C.M.Dubey College, Through its Secretary/Principal C.M. Dubey College, Bilaspur, Chhattisgarh.
5. The Principal, C.M. Dubey College, Bilaspur, Chhattisgarh

----Respondents

For Petitioner	:	Mr. B. P. Gupta, Advocate
For State	:	Mr. Saleem Kazi, Dy. A.G.
For respondents 3 to 5	:	Mr. Ashish Shrivastava, Advocate

WPS No. 6721 of 2009

Prof. (Dr.) Uma Shankar Shukla, S/o Late Shri Ram Lal Shukla, aged about 65 years, retired Principal/Professor, Dept. of Political Science, D.P. Vipra College. Bilaspur (C.G.) R/o 4 Dharam Prakash Chawl, Circuit- House road, Bilaspur Chhattisgarh.

----- Petitioner

Versus

1. State of Chhattisgarh, Ministry of Higher Education, Through Secretary, Secretariat Raipur, Chhattisgarh.
2. Commissioner, Higher Education, Govt. Science College Campus, Raipur, Chhattisgarh.
3. Snatak Mahavidyalaya Shikshan Samiti, Through Chairman, Shri, R.N. Shukla, R/o 26-A, Vidya Nagar, Bilaspur Chhattisgarh.
4. Governing body, D.P. Vipra College, Bilaspur, Through Secretary/Principal, D.P Vipra College, High Court road, Bilaspur, Chhattisgarh.
5. D.P. Vipra College, Through Principal. High Court Road, Bilaspur, Chhattisgarh.

-----Respondents**WPS No. 427 of 2010**

Prof. (Dr.) Smt. Raman Shrivastava W/o Shri B.K. Shrivastava, aged about 66 years, Rtd. Prof., Dept. of Political Science, D.P. Vipra College, Bilaspur, R/o A-12, 25 Bangalows, Behind St. Xavier School, Vyapar Vihar Road, Bilaspur, Distt. Bilaspur Chhattisgarh.

----- Petitioner**Versus**

1. State of Chhattisgarh, Ministry of Higher Education, Through Secretariat, Secretary at Raipur Chhattisgarh.
2. Commissioner, Higher Education, Govt. Science College Campus, Raipur, Chhattisgarh.
3. Snatak Mahavidyalaya Shikshan Samiti, Through Chairman, Shri, R.N. Shukla, R/o 26-A, Vidya Nagar, Bilaspur Chhattisgarh.
4. Governing body, D.P. Vipra College, Bilaspur, Through Secretary/Principal, D.P Vipra College, High Court road, Bilaspur, Chhattisgarh.
5. D.P. Vipra College, Through Principal. High Court Road, Bilaspur, Chhattisgarh.

--- Respondents

For Petitioners	:	Mr. B. P. Gupta, Advocate
For State	:	Mr. Saleem Kazi, Dy. A.G.
For respondents 3 to 5	:	Mr. Sudeep Agrawal, Advocate

WPS No. 428 of 2010

Prof. (Dr.) B.K. Shrivastava, S/o Late Shri R.B.L. Shrivastava, aged about 74 years, Rtd. Prof., Dept. of Political Science, C.M.D. College, Bilaspur, R/o A-12, 25 Bangalows, Behind St. Xavier School, Vyapar Vihar Road, Bilaspur, Distt. Bilaspur, Chhattisgarh.

----- Petitioner

VERSUS

1. State of Chhattisgarh, Ministry of Higher Education, through Secretary, Secretariat Raipur, Chhattisgarh.
2. Commissioner, Higher Education, Govt. Science College Campus, Raipur Distt. Raipur Chhattisgarh.
3. C.M. Dubey Shikshan Samiti (Registered), through chairman, Shri Sanjay Dubey, R/o Sadar Bazar, Bilaspur, Distt. Bilaspur, Chhattisgarh.
4. Governing Body, C.M.Dubey College, Bilaspur, through Secretary/Principal, C.M. Dubey College, Link Road, Bilaspur, Distt. Bilaspur, Chhattisgarh.
5. C. M. Dubey College, through Principal, C.M.D. College, Bilaspur, Link Road, Bilaspur, Distt. Bilaspur, Chhattisgarh.

---- Respondents

WPS No. 429 of 2010

Prof. (Dr.) S.P. Pandey S/o Late Shri M.P. Pandey, aged about 73 years, Retd. Prof. Dept. of Hindi, C.M.D. College Bilaspur, R/o Gali No. R-3, Vinoba Nagar, Bilaspur, Chhattisgarh.

-----Petitioner

VERSUS

1. State of Chhattisgarh, Ministry of Higher Education, through Secretary, Secretariat Raipur, Chhattisgarh.

2. Commissioner, Higher Education, Govt. Science College Campus, Raipur Distt. Raipur Chhattisgarh.
3. C.M. Dubey Shikshan Samiti (Registered), through chairman, Shri Sanjay Dubey, R/o Sadar Bazar, Bilaspur, Distt. Bilaspur, Chhattisgarh.
4. Governing Body, C.M. Dubey College, Bilaspur, through Secretary/Principal, C.M. Dubey College, Link Road, Bilaspur, Distt. Bilaspur, Chhattisgarh.
5. C. M. Dubey College, through Principal, C.M.D. College, Bilaspur, Link Road, Bilaspur, Distt. Bilaspur, Chhattisgarh.

----- Respondents

For Petitioners	:	Mr. B. P. Gupta, Advocate
For State	:	Mr. Saleem Kazi, Dy. A.G.
For respondents 3 to 5	:	Mr. Rejeev Shrivastava, Advocate

Hon'ble Shri Justice P. Sam Koshy
Order on Board

05/03/2019

1. These are bunch of writ petitions with a common relief. At the initial stage though the petitioners had claimed for other reliefs as well, however, during the course of argument, counsel appearing for the petitioners confined their claim for grant of pension and gratuity at the revised rate granted by the State Govt. as per 5th Pay Commission Recommendation.
2. The petitioners herein have a checkered history of litigation right from 2002 onwards. All the petitioners in these writ petitions are Professors/Assistant Professors working in three different aided private educational institutions namely C.M.D. College, Bilaspur, D. P. Vipra College, Bilaspur and Durga Post Graduate College, Raipur.

3. Undisputedly, each of the petitioners were drawing salary and other benefits that were payable to them under 4th Pay Commission till the pay scales were revised by the recommendation of 5th Pay Commission. The State Govt. vide order dated 28.10.1999 passed an order holding that all the teaching and non-teaching staffs in the aided non-government colleges would also be given the benefit of 5th Pay Commission recommendation w.e.f. 01.01.1996. The respondents had also decided granting of arrears of pay in a phased manner to the petitioners.
4. On the date of retirement of each of the petitioners, the respective colleges had made recommendation to the Govt. for grant of pension and gratuity at the revised rate as revised after the order dated 28.10.1999. The State Govt. however, subsequently vide order dated 20.08.2001 in respect of professors retired from CMD college asked the college authorities to send pension papers at the pre-revised rate taking the cut off date as 01.01.1996 and directed the college to send the pension papers of the petitioners as per the salary that they were drawing as on 01.01.1996. The pension thereafter was being paid as per the pre-revised rate.
5. This action of the State Govt. was initially challenged before the M.P. High Court in the case of K. L. Khandelwal & Anr. Vs. State of Madhya Pradesh & others in W. P. No. 1736/1996. Allowing the said writ petition the M.P. High Court vide its order dated 25.02.1999 directed the State Govt. to grant the benefits as per the revised pay scale to the petitioners therein.

6. In the case of Chhattisgarh also, the petitioners filed a writ petition for similar relief. The said writ petition first stood allowed on 18.01.2006. The said order of the High Court was subjected to challenge before the Supreme Court in Special Leave to Appeal No. 15834 of 2006 which was ultimately withdrawn by the State Govt. vide order dated 09.07.2007 with a liberty to prefer an appeal against the order passed by the Single Bench. Subsequently, the State Govt. preferred a writ appeal which was registered as Writ Appeal No. 192 of 2007. The said appeal was also withdrawn before the Division Bench seeking liberty to prefer review before the Single Bench which had originally passed an order on 18.01.2006.

7. The respondent State subsequently preferred a review petition i.e. Review Petition No. 22/2008 which finally stood allowed on 25.04.2011. The High Court vide its order dated 25.04.2011 held that the liability of payment of pension and gratuity at the revised rate would be upon the respective colleges in stead of the State Govt. This order in the review petition dated 25.04.2011 was later on challenged in a writ appeal by the respective colleges and the writ appeal was registered as Writ Appeal No. 288/2011. The said writ appeal stood allowed on 22.08.2012 and it was ordered by the Division Bench that the order passed in the review petition was not proper and justified and if at all if any order was to be passed, it ought to have been passed by recalling the order dated 18.01.2006 in the original writ petition itself. The writ appeal accordingly was allowed after setting aside the order passed in the review petition and it was ordered that the writ petition itself would be heard and decided

on merits. Thus, these writ petitions have now come up for hearing again for decision on merits.

8. Counsel for the petitioners submits that pending the writ petitions before this Court, the respondents have subsequently granted the benefit of pension at the revised rate to the petitioners w.e.f. October, 2010 which all the petitioners are getting even today. This aspect is not disputed by any of the respondents. The petitioners along with the writ petitions have brought certain documents vide application dated 16.01.2013 whereby the petitioners have produced certain documents which would show that the persons similarly placed but who have not filed writ petition before the High Court or anywhere else are also being paid pension as per the revised rate.
9. This aspect is also not disputed by any of the respondents. In fact, counsel appearing for the respective colleges have categorically made a submission before this Court that the State Govt. has in fact been paying pension at the revised rate to all the teaching and non-teaching staffs who are retiring from the colleges at the revised rate but the same was not extended to the present petitioners initially and which from October, 2010 has been released and continued to be paid.
10. So far as the present petitioners are concerned, the dispute now stands confined only to the entitlement of pension at the revised rate from the date of retirement till October 2010 since when the petitioners have been receiving at the revised rate.

11. From the aforesaid undisputed facts what is clearly culling out is that the petitioners admittedly retired from service after 01.01.1996. The State Govt. vide order dated 28.10.1999 held that the teaching and non-teaching staffs of the aided non-government institutions would also be entitled for the benefits of 5th pay commission and the pension would accordingly be revised in each of the cases. The said order dated 28.10.1999 has not been recalled or cancelled by the State Govt. at any point of time. Undisputedly, the State Govt. was paying pension to teaching and non-teaching staffs of the aided non-government institutions even prior to the implementation of 5th Pay Commission which establishes the liability part of payment of pension by the State Govt. and which further stands established from the fact that even the revised pension is being released to each of the petitioners beyond October, 2010.
12. State counsel, on the other hand, opposing the petitions submits that since the petitioners were directly in employment under the private educational institutions, the liability of payment of pension and gratuity ought to have been saddled upon the private institutions as is evident from the order dated 30.05.1992. Vide order dated 21st September, 1992 the State Govt. is said to have taken a stand that since the teaching and non-teaching staffs would be entitled for pension, they would not be entitled for the benefit of revision of pay scale and the pension also would be paid at the pre-revised rate itself.
13. This contention of the State Govt. is hard to accept for the reason that the liability part of the State Govt. was not in dispute

prior to the coming into force of the 5th Pay Commission. The liability has also been accepted by the State Govt. at the revised rate subsequent to October, 2010 itself. In between also it was the State Govt. who were paying pension though under the revised rate.

14. The dispute now stands confined only to the entitlement of the petitioners for pension and gratuity at the revised scale for the intervening period i.e. from the date of retirement till October, 2010.

15. Counsel for the petitioners as well as the respective colleges have brought before this court the fact that initially the liability was saddled upon Madhya Pradesh Shiksha Anudan Aayog but as per their submission, no committee was constituted at all as was required under the said provision and subsequently the said Commission itself was abolished vide notification dated 02.03.1994 w.e.f. 31st March, 1994 and thereafter the entire liability stood that upon the State Govt.

16. This Court, in the aforesaid factual matrix, has no hesitation in reaching to the conclusion that since the State Govt. has accepted its liability for grant of salary which the petitioners were drawing as per the 5th pay commission from 01.01.1996 onwards and the State Govt. subsequently having accepted the grant of pension at the revised rate from October, 2010 and in the absence of any specific order by the State Govt. cancelling the order dated 28.10.1999 so far as the implementation of 5th Pay Commission is concerned and also the fact that there is no order whereby the State Govt. has passed an order that the petitioners would not be entitled for pension and gratuity at the revised rate till October, 2010, as a natural

consequence, the petitioners would be entitled for pension at the revised rate.

17. Moreover, the stand of the State Govt. is also hard to accept for the simple reason that undisputedly most of the petitioners in the instant case had received salary at the revised rate as per the order dated 28.10.1999.

18. If that be so, the pension would have to be calculated on the basis of the average pay that they had received in the preceding year prior to their date of retirement. When the petitioners have received salary at the revised rate, there is no reason as to why they would not be entitled for pension at the revised rate.

19. Given the aforesaid stand, these writ petitions deserves to be and is accordingly allowed. It is ordered that the respondents shall ensure that the petitioners are paid pension as per the revised rate that they are entitled for on the basis of revised pay. The respondent State is directed to ensure the release of pension at the revised scale at the earliest.

20. So far as the petitioners in WP Nos. 407/05 and 4057/04 are concerned, it is reflected that many of the petitioners herein retired subsequent to 01.01.1996 but before 28.10.1999. In respect of these petitioners also, since there is no specific order of the State Govt. making the applicability of the revised pay scale prospectively from 28.10.1999 and neither there being any order specifically holding that it would not be applicable upon those persons who already stood retired before 28.10.1999, the petitioners in these two

writ petitions would also be entitled for pension and gratuity as per the revised pay scale recommended by the State Govt. Needless to mention that since this Court has already ordered that the petitioners would be entitled for pension at the revised rate, as a consequence the petitioners would also be entitled for any subsequent periodical revision of pay implemented by the State Govt. from time to time.

**Sd/-
(P. Sam Koshy)
Judge**

Khatai