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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 242 of 2019**

{Arising out of Order dated 13.09.2018 passed in Writ Petition No. 605 of 2006 by the learned Single Judge }

1. Guru Ghasidas University Through Its Registrar, Guru Ghasidas University, Koni, Bilaspur, District Bilaspur Chhattisgarh
2. Registrar Guru Ghasidas University, Koni, Bilaspur Chhattisgarh.
3. The Guru Ghasidas University A Body Corporate And Establishment Under Clause (3) Of The Central Universities Ordinance 2009 Through Its Registrar, Guru Ghasidas University Koni, Bilaspur Chhattisgarh.

---- Appellants**Versus**

Ku. Archana Saxena D/o Shri A.K. Saxena Aged About 33 Years Presently Working As Assistant Librarian (Contract Basis), Guru Ghasidas University, Bilaspur, R/o Surajmukhi, R.K. Nagar, Bilaspur Chhattisgarh.

---- Respondent**AND****Writ Appeal No. 240 of 2019**

{Arising out of Order dated 13.09.2018 passed in Writ Petition No. 6148 of 2006 by the learned Single Judge }

1. Guru Ghasidas University, Through Its Registrar, Guru Ghasidas University, Koni, Bilaspur District Bilaspur Chhattisgarh.
2. Registrar, Guru Ghasidas University, Koni Bilaspur Chhattisgarh.
3. The Guru Ghasidas University, A Body Corporate And Establishment Under Clause (3) Of The Central Universities Ordinance 2009 Through Its Registrar, Guru Ghasidas University, Koni, Bilaspur Chhattisgarh.

---- Appellants

Versus

Ku. Afsha Ansari D/o Shri K G Ansari, Aged About 36 Years Presently Working
As Assistant Librarian (Contract Basis), Guru Ghasidas University, Bilaspur, R/o
Akbar Khan Ki Chall, Opp. Mission Hospital, Bilaspur Chhattisgarh.

---- Respondent

For Appellants/University	: Shri Neeraj Choubey, Advocate
For Respondent/Employee	: Shri Faiz Kazi, Advocate.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

Per Parth Prateem Sahu, J.

12/07/2019

1. The Appellant-University has challenged the order dated 13.09.2018 passed by the learned Writ Court whereby it has set aside the order dated 03.04.2006 and resolution dated 30.03.2006 (Annexure P/11 and P/12, respectively to the writ petition) by which the order of grant of regular pay scale to respective respondents were withdrawn and they were treated as Assistant Librarian on contractual basis on fixed pay.
2. The facts of the case are that the Respondents herein were appointed as Contractual Assistant Librarian on 28.11.1999. After being appointed, the private Respondents joined their posts and were working as Assistant Librarian in the Appellant-University. While they were serving on contractual basis in the Appellant-University, they made a representation on 25.02.2004 for regularisation of their services and grant of regular pay scale. The Incharge Vice Chancellor of the University sent the representation to the Executive Council which remained pending. Subsequently, on 21.05.2004, one order was passed granting regular pay scale of Rs. 8000-275-13500/- to the private Respondents under the signature of the then Registrar who

was said to be posted on deputation. When the post of Vice Chancellor and the Registrar was filled up by the regular Vice Chancellor and regular Registrar, then it was revealed that the private Respondents were wrongly granted regular pay scale as the appropriate authority i.e. the Executive Council has not passed any such resolution with regard to regularisation of the services of the private Respondents in the permanent cadre. Thus, the impugned resolution dated 30.03.2006 and the consequent order dated 03.04.2006 was passed by the University, withdrawing the earlier order granting regular pay scale and Respondents were treated as contractual Assistant Librarian.

3. Aggrieved by the aforementioned orders passed by the Appellant-University withdrawing the benefit of regular pay scale, the Respondents herein approached this Court by filing Writ Petition No. 605 of 2006 and 6148 of 2006. The learned Single Judge, after hearing the parties, came to the conclusion that the order of withdrawal of regular pay scale was in violation of principles of natural justice as *prima facie* no notice was issued to the private Respondents, and accordingly, set aside the resolution dated 30.03.2006 and order dated 30.04.2006, by its order dated 13.09.2018. It is these orders of the Writ Court which is under challenge before this Court in present appeals.
4. Learned counsel appearing for the Appellant-University submits that the Executive Council is the authority under the Regulations for passing any orders with respect to creation of any administrative ministerial and other post. Though, the matter was put up before the Executive Council on forwarding the representation by the then Vice Chancellor, but the Executive Council had not taken any firm decision with regard to regularisation of services of private Respondents, but inadvertently and erroneously, the order granting regular pay scale was passed by the then Registrar who is not the authority to issue any such kind of order prior to

decision of Executive Council. He further argues that at the relevant time, the Registrar who had issued the order granting regular pay scale was not the permanent Registrar posted in the University but was on deputation. He further argues that when the said error came into the knowledge of the Registrar and the Vice Chancellor, the Executive Council, in its meeting have recommended for examining the matter and to take appropriate steps also. He next submits that as there was no order passed by the competent authority i.e. the Executive Council regularising the services of the private Respondents on the post of Assistant Librarian and granting regular pay scale, therefore the said orders were rightly withdrawn being illegal. The learned Single Judge committed an error in not considering the said factual aspect of the case with regard to the jurisdiction and the authority of the Registrar in passing such an order granting regular pay scale without there being any specific resolution to this effect.

5. Per contra, learned counsel appearing for the private Respondents submits that they are working continuously on the post of Assistant Librarian from the date of their joining i.e. since 1999 and on their representation, the orders granting regular pay scale was passed by the Registrar of the University. The said order was passed by the authorised officer of the University and therefore, it cannot be said that the order was illegal. He further submits that after lapse of two years from the date of grant of regular pay scale, suddenly the orders impugned in the writ petition were passed by the University without affording any opportunity of hearing to the Respondents herein and without issuance of any show cause notice. The learned writ Court, after recording the fact that no notice was issued to the private Respondents prior to passing of the impugned orders, has rightly set aside the resolution dated 30.03.2006 and the order dated 30.04.2006 which do not call for any interference.

6. We have heard learned counsel for the parties and perused the records.
7. On perusal of the records, particularly the impugned resolution which are part of the writ records resolution dated 30.03.2006 very specifically mentions that no such proceedings have been recorded by the Executive Council for regularisation of services and grant of regular pay scale to the private Respondents. In fact it also bears mention that proceeding of direct regular appointments of Assistant Librarian is advertised and proceeding of appointment is pending. On the basis of said resolution, the order dated 03.04.2006 has been passed. Learned Writ Court, without entering the factual disputes between the parties, has passed the impugned order considering that prior to passing of the impugned order, i.e. 03.04.2006, no show cause notice was issued to the Respondents nor their explanation was sought for and thus, held that the impugned order has been passed in violation of the principles of natural justice.
8. The fact that prior to cancellation of the order of regularisation and grant of regular pay, neither any show cause notice was issued to the Respondents nor any proceedings were drawn, nor have they been given any opportunity of hearing was not disputed by Appellant.
9. In the above mentioned facts and circumstances of this case, as the order of grant of regular pay scale to the private Respondents which they were availing for the last two years before passing of the orders impugned in the writ petition without granting opportunity of hearing to them, we uphold the order of the learned writ Court to the extent of setting aside the impugned resolution dated 30.03.2006 and the impugned order dated 03.04.2006. In the facts and circumstances of the case, we deem it fit and proper to modify the order dated 13.09.2018 of the writ Court to the extent of granting liberty to the Appellant-University to pass fresh appropriate orders after issuing show cause notice and granting opportunity of hearing to the private Respondents with respect to the subject matter i.e. withdrawal of grant of

regular pay scale.

10. It is also directed that after issuance of the show cause notice to the Respondents herein, and after granting opportunity of hearing, the Appellant-University will conclude the proceedings preferably within a further period of three months from the date of issuance of the show cause notice.
11. The writ appeal is disposed off in aforementioned terms.

Sd/-
(P.R. Ramachandra Menon)
CHIEF JUSTICE

Sd/-
(Parth Prateem Sahu)
JUDGE