

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 3420 of 2018

1. Balraj Motwani S/o Shri G.K. Motwani, Aged About 51 Years R/o 401, Sapsringi Apartment, Old Bus Stand Road, Bilaspur, District Bilaspur Chhattisgarh.
2. Deepak Tiwari, Assistant Professor D.P. Vipra College Bilaspur S/o Shri G.S. Tiwari, Aged 52 Yrs R/o Tiwari Chhal, Rajendra Nagar Bilaspur District Bilaspur Chhattisgarh.
3. A. Sri Ram Assistant Professor, D.P. Vipra College Bilaspur S/o Shri J.M.Rao, Aged 44 Yrs R/o Ramdas Nagar, Tikrapara Bilaspur, District Bilaspur Chhattisgarh.
4. Khagendra Kumar Soni, Professor, D.P. Vipra College Bilaspur S/o Shri N. R. Soni, Aged 51 Yrs R/o Madhuban Road, Dayalband Bilaspur, District Bilaspur Chhattisgarh.
5. Dr. Smt. Reenu Nair, Assistant Professor, D.P. Vipra College Bilaspur W/o Shri Vinit Nair, R/o Sahagal Gali, Vidya Nagar Bilaspur, District Bilaspur Chhattisgarh.
6. Smt. Snehlata Mishra Assistant Professor, D.P. Vipra College Bilaspur W/o Shri Manoj Mishra, Aged 41 Yrs R/o Triveni Nagar, New Sarkanda, Bilaspur, District Bilaspur Chhattisgarh.
7. Dr. R. N. Yadav, Professor, D.P. Vipra College Bilaspur S/o Shri R.S. Yadav, Aged 53 Yrs R/o Gali No. 4, Bangalipara New Sarkanda, Bilaspur, District Bilaspur Chhattisgarh.
8. Dr. Oorja Ranjan Sinha, Assistant Professor, D.P. Vipra College Bilaspur W/o Shri R.R. Sinha, Aged 45 Yrs R/o B - 8, Phase -li, Rajkishore Nagar, Bilaspur, District Bilaspur Chhattisgarh.
9. Dr. Smt. Subhraj Pandey Assistant Professor, D.P. Vipra College Bilaspur W/o Shri Abdul Mazid Khan, R/o Vijiya Puram, Seepat Road, Bilaspur, District Bilaspur Chhattisgarh.
10. Smt. Suchi Choudhary Assistant Professor, D.P. Vipra College Bilaspur W/o Shri Ritesh Choudhary, Aged 42 Yrs R/o Govardhan Bada, Tilak Nagar, Bilaspur, District Bilaspur Chhattisgarh.
11. Dr. Smt. Smriti Rani Prakash, Assistant Professor, D.P. Vipra College Bilaspur W/o Shri Vijay Prakash, Aged 39 Yrs R/o Near Mahila Thana, Masanganj, Bilaspur, District Bilaspur Chhattisgarh.

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Versus

1. State Of Chhattisgarh Through The Secretary To The Govt. Of Chhattisgarh. Department Of Higher Education Mantralaya Mahanadi Bhawan, Naya Raipur P.S. Rakhi, Raipur Chhattisgarh.
2. The Governing Body (Constituted Under Statute 28 Of College Code Of C.G. Vishwavidyalaya Adhinium 1973 Of D.P. Vipra College) Through The Secretary To The Governing Body Office Of Principal D.P. Vipra College Old High Court Road Bilaspur Chhattisgarh.

3. D.P. Vipra College Through The Principal D.P. Vipra College Old High Court Road Bilaspur Chhattisgarh.
4. The Principal D.P. Vipra College Old High Court Road Bilaspur Chhattisgarh
5. The Director, Local Fund Audit Directorate Second Block Indravati Bhawan, Naya Raipur, Raipur - 492002
6. The Regional Deputy Director, Local Fund Audit New Composite Building Second Floor, Bilaspur Chhattisgarh.

---- Respondents

For Petitioners	: Mr. Anurag Dayal Shrivastava, Advocate.
For State/Respondents No.1 5 & 6	: Mr. Siddharth Dubey, Deputy G.A. and Mr. Vikram Sharma, Panel Lawyer
For Respondents No. 2,3 & 4	: Mr. B.P. Sharma and Mr. M.L. Saket, Advocates

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

Order on Board

P. R. Ramachandra Menon, Chief Justice

19.07.2019

1. The recovery steps being pursued by the Respondent-Educational Institution and the Society running the said Institution, simply yielding to the objection raised by the Local Fund Audit Department notwithstanding the fact that the Educational Institution is not an Aided College (though it is getting some grant-in-aid from the State) and the salary of the Petitioners are coming with the funds of the Educational Institution (as contributed by the students by way of fees), form the subject matter of challenge in this writ petition.
2. Mr. Shrivastava, the learned counsel for the Petitioners, submits that this is the second round of litigation and there is total non-application of mind, both on the part of the Government and also on the part of the Respondent-Educational Institution. To have proper adjudication, it will

be worthwhile to refer to some instances / circumstances which led to the cause of action. The Petitioners are working as Assistant Professors in the Respondent-Educational Institution. For their own reasons, they went on strike for nearly six months and they were not obtaining any salary during the relevant period. Later, the Government intervened and an Administrator was appointed, who continued for nearly three years and thereafter, by virtue of the statutory mandate, the present governing body resumed its office. When the Institution was being run by the Administrator, a decision was taken with regard to the service and such other aspects, related to the period of strike and it was decided to grant three months salary to the Petitioners, to be set off against the 'Earned Leave' standing to the credit of the Petitioners. It was accordingly, that the amount equal to three months' salary was paid to the Petitioners.

3. One fine morning, some audit objection was raised by the Local Audit Fund Department, observing that the amount paid to the Petitioners and such others as above, required to be recovered. This was sought to be challenged by the Petitioners pointing out that the Institution was running on the funds of the Society and as such, there was absolutely no power vested in the Government or the Local Fund Audit to intervene in the day to day running of the Institution and order recovery. A number of writ petitions came to be filed before this Court and all the cases were finalized as per common judgment dated 25.10.2017, whereby some direction was given, the operative portion, which as contained in paragraphs 4 & 5, is extracted below :

“4. In view of the above instead of keeping these petitions pending the same are allowed at the admission stage quashing the respondents' action of making recovery of the amount from the petitioners' salary. The respondent institution is directed to refund the amount to the petitioners, which has been deducted from their salary.

5. However, it is left open for the respondents to pass fresh order after giving proper adequate opportunity of hearing to the petitioners.”

4. The Educational Institution pursued the matter by filing different appeals and all the said cases came to be considered and finalized as per Annexure-P/1 judgment dated 15.11.2017. The course of action to be pursued was modified by the Division Bench, whereby the writ petitioners, who were the Respondents in the appeals, were to be served with the crux of the objection raised by the Local Fund Audit Department so as to enable them to make appropriate submissions before the Local Fund Audit Department pointing out the unsustainability of the audit objections as aforesaid and thereafter to have the matter finalized by the Management/Educational Institution taking note of the objections raised by the writ petitioners and also the version of the Local Fund Audit Department to be obtained in the meanwhile. The learned Additional Advocate General, who represented the State, was required to inform the Local Fund Audit Department to see that the objection raised by the writ petitioners was not kept pending for long (though the Local Fund Audit Department was never included in the party array).

5. The grievance of the Petitioners now raised before this Court is that the judgment given by the Bench has not been given effect to and the Respondent-Institution is proceeding with steps for effecting the recovery as originally envisaged. It is also pointed out that the Petitioners, though have raised the objection before the Local Fund Audit Department, it has not been considered or finalized so far and as such, there is no rhyme or reason for the Respondent-Institution to proceed with the recovery steps without passing any final order as directed by the Division Bench and hence the grievance.
6. Mr. Siddharth Dubey, the learned Deputy Government Advocate, representing the State submits with reference to the return filed by the State, that the intervention of the Local Fund Audit Department raising the audit objection and ordering recovery was only in view of the fact that the State is pumping in sufficient amount by way of 'grant-in-aid' for maintenance and development of the Institution and that the Institution was not maintaining separate accounts with regard to utilization of the said 'grant-in-aid' and the funds procured by the Society at their level. Since the grant-in-aid provided by the Government was also forming part of the common pool, it could not be diverted for extending any undue benefit to persons like the Petitioners. It necessarily has to be recovered, being part of the public money, more so, in view of the State Finance Code. It is also made clear that, if the amount in question was exclusively belonging to the Respondent-Institution, the Government was not having any objection with regard to the course sought to be pursued.

7. Mr. Sharma, learned counsel representing the Respondent-Educational Institution, submits that the management Institution has decided to give effect to the audit objection, in view of the fact that they admittedly, were not maintaining different accounts in respect of the grant-in-aid given by the Government and the amounts procured by the Educational-Institution by way of fees paid by the students. The learned counsel also submits with reference to the contents of the return filed and the documents produced that the Petitioners, who went on strike for nearly six months, are not entitled to have any concession and the amount paid to them was only as 'part of advance', on humanitarian consideration by the Administrator. The said amount requires to be recovered as pointed out by the Audit Department and hence the proceedings. At the same time, the learned counsel concedes that, though copy of the audit objection was given to the Petitioners and such other similarly situated persons, also issuing notice as to the further course of action and the hearing ordered to be given by this Court as per Annexure-P/1, some of them did not even turn up and some of them refused to accept the same. The matter had to be finalized within 'three months' as per the outer limit ordered by the Division Bench of this Court and it was accordingly, that the recovery was ordered to be pursued.
8. The learned counsel for the Petitioners asserts that the version of the Respondent-Institution that the amount was paid by way of 'salary advance' is not correct. According to the Petitioners, the amount, was infact paid to them as equivalent to three month's salary, setting off

against the Earned Leave standing to the credit of the Petitioners and if this be so, they are adversely affected because of the recovery steps, insofar as they have already lost the said extent of Earned Leave, which was standing to their credit. The Respondent-Institution, since admittedly has not passed final orders as to the exact nature of the amount paid to the persons like the Petitioners and as to the justifiability of recovery, in compliance with the direction given as per Annexure-P/1, this Court cannot, but hold that the steps for proceeding with the recovery before passing such order after hearing the Petitioners and others concerned is not correct or proper.

9. In the above circumstances, we grant a further time of 'one month' to the Competent Authority, representing the Respondent-Educational Institution, to pass a speaking order in this regard, based on the hearing already held. The outcome shall be let known to the persons concerned, including the Petitioners, before proceeding with further steps. We also uphold the stand of the Government, as put forth by the learned counsel representing the State, that insofar as the Educational Institution has not maintained separate accounts in respect of 'grant-in-aid' and also the amounts procured by the Institution at their level, it was quite right for the Local Fund Audit Department to have audited the same to ascertain the factual aspects and to take necessary steps to protect the interest of the State to the requisite extent and to save the public money, in view of the provisions of the State Finance Code and in exercise of the powers under Section 9 of the Chhattisgarh Sthaniya Nidhi Sampariksha Adhiniyam, 1973. We make it clear, that the

recovery proceedings against the Petitioners could be continued only subject to the orders to be passed as aforesaid within one month from the date of getting a certified copy of this judgment.

10. With the above observation, the writ petition stands disposed off.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

Chandra