

HIGH COURT OF CHHATTISGARH AT BILASPURWPS No. 3611 of 2019

Smt. Bharti Kaiwartya W/o Late Santosh Kaiwartya Aged About 44 Years Working As Assistant Teacher (Panchayat) And Posted At Govt. Primary School Modhe, Block Takhatpur, District- Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Panchayat And Rural Development, Mahanadi Bhawan, Mantralaya, Naya Raipur, District- Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
2. Chief Executive Officer Janpad Panchayat Takhatpur, District- Bilaspur, Chhattisgarh.

---- Respondents

For petitioner	:	Shri Ajay Shrivastava, Advocate.
For State	:	Ms. Sunita Jain, GA

Hon'ble Shri Justice P. Sam Koshy

Order on Board

13/05/2019

1. The grievance of the petitioner in the instant Writ Petition is the action on part of the respondents in discontinuing the benefit of one increment which the petitioner has got on undergoing family planning operation while granting the benefit of revision of pay in July-2016.
2. The contention of the counsel for the petitioner is that, the benefit which has been extended to the petitioner of two increments on undergoing family planning operation cannot be curtailed, withdrawn or stopped even while granting the benefit of revision of pay. According to him, the said issue already stands decided by the State Administrative Tribunal in

O.A.No.362/1998 decided on 14/12/2000. According to him, since the benefit has already been extended to the petitioner at one point of time, the same could not have been either withdrawn or discontinued even on revision of pay. He further submits that, even otherwise, the said action is bad for the reason that, the decision of the respondents in discontinuing the benefit is without affording an opportunity of hearing to the petitioner and thus it is violative of principles of natural justice.

3. Having heard the contentions put forth by the counsel for the petitioner, this Court is of the view that, prima-facie, it appears that there does not seem to be an order passed by the authorities in discontinuing the benefit which has been extended, neither does the action of the respondents seem to have been taken after granting an opportunity of hearing to the petitioner. This High Court also in WPS No. 4486/2005 in the case of **A. K. Kesharwani Vs. State of Chhattisgarh & Others** decided on **09.03.2010** have held that not including of the advance increment which the petitioner was getting on account of undergoing family planning operation at the time of implementation of revision of pay to be bad in law. The Case of A. K. Kesharwani was decided in the light of the Division Bench Judgment of M.P. High Court in the case of **Dr. Smt. Vijya Kothalkar Vs. State of M.P. & Others, (2001) 5 MPHT 295(D.B.)**.

4. Under the said circumstances this Court is of the opinion that, the instant Writ Petition itself deserve to be disposed off with a direction to the respondent No.2 to consider the case of the petitioner in the light of the order of the Madhya Pradesh State Administrative Tribunal passed in

O.A.No.362/1998 decided on 14/12/2000. While deciding the claim of the petitioner the authorities would also take note of the aforesaid two decisions rendered in the case of A.K. Kesharwani(Supra) as also in the case of Dr. Smt. Vijya Kothalkar(Supra), the respondent No.2 would also take into consideration whether there is any specific order passed by the State Government in this regard or not.

5. Subject to verification of the aforesaid facts, the respondent No.2 shall pass an appropriate order within a period of 60 days from the date of receipt of copy of this order.

6. The Writ Petition accordingly stands disposed off.

Sd/-

(P. Sam Koshy)
JUDGE

Rohit