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HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 352 of 2019***(Arising out of order dated 17.07.2019 passed by the learned Single Judge in Writ
Petition (S) No. 5223 of 2019)*

- Dr. Arti Singh W/o Shri Satyendra Singh Aged About 44 Years R/o Devbhawan, Rajiv Vihar, Loyolla School Road, Village Lingiyadih, District Bilaspur Chhattisgarh. Pincode - 495001

---- Appellant**Versus**

1. Guru Ghasidas Vishwavidyalaya Through Vice Chancellor Koni, Bilaspur, District Bilaspur Chhattisgarh. 495009
2. Registrar Guru Ghasidas Vishwavidyalay Koni, Bilaspur, District Bilaspur, Chhattisgarh. 495009
3. University Grants Commission Bahadur Shah Zafar, Marg, New Dehli - 110002
4. Secretary Department Of Higher Education Ministry Of Human Resource Development, Government Of India, Shastri Bhawan, New Delhi - 110001
5. Secretary Department Of Personnel And Training Ministry Of Personnel, Public Grievance And Pensions, Government Of India, North Block, New Delhi - 110001

---- Respondents

For Appellant	: Shri Sangharsh Pandey, Advocate.
For Respondents No. 1 & 2 / GGU	: Shri Ashish Shrivastava, Advocate.
For Respondent No. 3 / UGC	: Shri R. K. Gupta, Advocate.
For Respondent No. 4	: Shri Neeraj Choubey, Advocate.
For Respondent No. 5	: Shri Krishna Gopal Yadav, Advocate on behalf of Shri B. Gopa Kumar, A.S.G.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**Hon'ble Shri Justice Parth Prateem Sahu, Judge****Judgment on Board****P. R. Ramachandra Menon, Chief Justice****07.08.2019**

1. The Appellant is stated as aggrieved of the verdict passed by the learned Single Judge, whereby the writ petition filed by him challenging the course pursued by the Guru Ghasidas University (for short, 'the University') in issuing a Notification with regard to the appointment to the post of Assistant Professor-HRDC was

dealt with and finalized, allegedly without properly taking note of the submissions made from the part of the writ Petitioner as to necessity to have finalized the selection proceeding with reference to the advertisement issued on '29.07.2016' and not the subsequent ones.

2. Heard Shri Sangharsh Pandey, the learned counsel appearing to the Petitioner / Appellant, Shri Ashish Shrivastava, the learned counsel appearing for the University, Shri R. K. Gupta, the learned Standing counsel for the UGC, Shri Neeraj Choubey and Shri Krishna Gopal Yadav, Advocate appearing on behalf of the Central Government.
3. The grievance projected before the writ Court was that the University had issued a Notification on 29.07.2016, inviting applications for selection and appointment to various posts, which included one post of Assistant Professor-HRDC as well. The Appellant satisfied all the requisite qualifications and hence, he applied for the post. As a matter of fact, the advertisement was a 'rolling advertisement', which is to the effect that, it would be open for the candidates to make applications any time during the year and the selection will be finalized later, which was mainly intended to attract better and qualified candidates to come and contest for the post. The University came up with another Notification in similar terms on 24.11.2017, stipulating the last date for application as 07.12.2017. It was stated therein that the aspirants, who had already made applications also had to make fresh application with all the relevant particulars, except that there was no need to satisfy any fees. This was followed by another Notification i.e., Annexure P/1 dated 08.03.2019, which was in similar terms and by virtue of the enabling clause, no further fee was to be satisfied by the persons who had already made application, but they had to give relevant particulars including as to satisfaction of the fees done earlier. Now comes another Notification dated 03.06.2019 (copy of which has been

produced as Annexure P/3), whereby the post in question, which was in the 'Unreserved' segment has been changed and shifted to EWS (Economically Weaker Section) category, presumably, giving effect to the 103rd Amendment of the Constitution of India, providing reservation to the EWS category to an extent of 10%. This being detrimental to the rights and interest of the Petitioner / Appellant, she sought to challenge it by filing writ petition, pointing out that the course pursued by the University was *per se* wrong and illegal in all respects. For convenience of reference, we extract the prayers as given below:

- “10.1. That, this Hon'ble Court may kindly be pleased to call for the entire records in relation to the case of the petitioner from the possession of respondents for its kind perusal.
- 10.2. That, this Hon'ble Court may kindly be pleased to issue a writ or writs/order or orders quashing the entire advertisement dated 03.06.2019 being arbitrary, illegal and against the law.
- 10.3. That, this Hon'ble Court may direct the respondent authorities to complete the recruitment process in accordance with the advertisement dated 29.07.2016.
- 10.4. That, this Hon'ble Court may kindly be pleased to observe that the act of respondent authorities is in violation of UGC guidelines, Chapter-5 of DoPT, provisions of Central Universities Act, 2009, and Article 14 and 16 of the Constitution of India.
- 10.5. That, this Hon'ble Court may kindly be pleased to grant any other relief/reliefs in favour of the petitioner, which the Hon'ble Court deemed fit & just in the facts and circumstances of the case, including awarding of the costs of the petitioner.”

4. When the matter was pending consideration, the University came up with a fresh Notification styled as a 'Corrigendum Notification' dated 15.07.2019 (copy of which has been produced as Annexure A/2 alongwith writ appeal) to the effect that the post of the Assistant Professor-HRDC will continue to be in the 'Unreserved' segment, virtually correcting the mistake in having shown the same as the in the 'EWS category' in the previous Notification dated 03.06.2019. As per the said Notification, it is stated that the candidates who had already made applications, pursuant to earlier advertisement, had also to apply

again showing their details, but it was not necessary for them to satisfy the fees afresh. By virtue of said Notification, the grievance projected by the Petitioner stood redressed and the writ petition had virtually become infructuous, according to the University.

5. The sequence of events were taken note of by the learned Single Judge and it was observed that, in view of the corrected Notification dated 15.07.2019, the solitary post of Assistant Professor-HRDC was thrown open in the 'Unreserved' segment and that no prejudice was there to the Petitioner under any circumstance. The writ petition was disposed off, accordingly. The Petitioner however, has moved this Court by filing the present appeal, virtually with the prayer that the selection process has to be finalized only on the basis of the Notification dated 29.07.2016 and not on the basis of any subsequent Notification.
6. We find it difficult to understand the logic behind the said submissions, insofar as the grievance was that, by virtue of the change in the course sought to be pursued by the University by shifting the one and only post in the 'Unreserved' segment to the EWS category, it was adversely to affect the chance of the Appellant for being considered to the post in question. But, when the said mistake was realized by the University, the same was corrected by issuing 'Corrigendum Notification' and the position is put back, whereby the Appellant is made eligible to be considered for the post.
7. The learned counsel for the Petitioner / Appellant submits that the Notification issued by the University is full of mistakes and irregularities and reliance is sought to be placed on the Fifty-Eighth report submitted by the Ministry of Human Resource Development (Department of Higher Education) placed before the Lok-Sabha. A specific reference is made to paragraph 42 therein, to the effect that the University has been pursuing so many irregularities in various

spheres. We do not find it necessary to go into these details, as the issue involved herein is specific, as to the rights of the Petitioner is to be considered for the post in question as an 'Unreserved candidate'.

8. The learned counsel submits that the learned Judge ought to have exercised the power in all respects, especially, it being a proceeding under Article 226 of the Constitution of India. In support of this, reliance is sought to be placed on the verdict dated 29.07.2019 passed by the Apex Court in Civil Appeal No. 5654 of 2019 (Maharashtra Chess Association v. Union of India & Ors.) with specific reference to the contents in paragraphs 11 & 12, which are in the following terms:

“11. Article 226 (1) of the Constitution confers on High Courts the power to issue writs, and consequently, the jurisdiction to entertain actions for the issuance of writs notwithstanding anything in article 32 every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including [writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose]. The text of Article 226 (1) provides that the High Court may issue writs for the enforcement of the fundamental rights in Part III of the Constitution, or “for any other purpose”. A citizen may seek out the writ jurisdiction of the High Court not only in cases where her fundamental right may be infringed, but a much wider array of situations. Lord Coke, commenting on the use of writs by courts in England stated:

“The Court of King's Bench hath not only the authority to correct errors in judicial proceedings, but other errors and misdemeanours [...] tending to the breach of peace, or oppression of the subjects, or raising of faction, controversy, debate or any other manner of misgovernment; so that no wrong or injury, public or private, can be done, but that this shall be reformed or punished by due course of law.....” {James Bagg's Case (1572) 77 ER 1271}

Echoing the sentiments of Lord Coke, this Court in **Uttar Pradesh State Sugar Corporation Limited v Kamal Swaroop Tandon {(2008) 2 SCC 41}** observed that:

“35... It is well settled that the jurisdiction of the High Court under Article 226 of the Constitution

is equitable and discretionary. The power under that Article can be exercised by the High Court “to reach injustice wherever it is found.”

12. The role of the High Court under the Constitution is crucial to ensuring the rule of law throughout its territorial jurisdiction. In order to achieve these transcendental goals, the powers of the High Court under its writ jurisdiction are necessarily broad. They are conferred in aid of justice. This Court has repeatedly held that no limitation can be placed on the power of the High Court in exercise of its writ jurisdiction. In **A V Venkateswaran, Collector of Customs, Bombay v. Ramchand Sobhraj Wadhwani {(1962) 1 SCR 753}** a Constitution Bench of this Court held that the nature of power exercised by the High Court under its writ jurisdiction is inherently dependent on the threat to the rule of law arising in the case before it:

“10... We need only add that the broad lines of the general principles on which the court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the Court, and that in a matter which is thus pre-eminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible Rules which should be applied with rigidity in every case which comes up before the Court.”

The powers of the High Court in exercise of its writ jurisdiction cannot be circumscribed by strict legal principles so as to hobble the High Court in fulfilling its mandate to uphold the rule of law.”

9. It is to be noted that, the primary point considered in the said case was with regard to the exclusive jurisdiction of the Court as discussed in the opening paragraph. The observation made therein does in nowhere come to rescue the Petitioner / Appellant so as to support the case herein and to confine the selection process to the Notification dated 29.07.2016. This is more so, when the right of the Petitioner/Appellant to be considered as an 'Unreserved candidate', as per the said Notification has been restored by the University issuing 'Corrigendum Notification' dated 15.07.2019, after correcting the mistake, which crept in the earlier Notification dated 03.06.2019.

10. It appears that the Petitioner / Appellant was apprehensive as to the loss of chance to participate in the process of selection, when the one and only post of Assistant Professor – HRDC shown as 'Unreserved' in the original notification got changed it to 'reserved' segment under EWS as per Annexure P/3 Notification dated 03.06.2019. It was in the said circumstance, that the Petitioner/Appellant sought to contend before the learned Single Judge that the process of selection having started, should not have been changed during the midst of selection. We are aware of the ruling rendered by the Supreme Court that rules of the game cannot be changed after commencement of the game, as held in **K. Manjusree v. State of Andhra Pradesh and Another** reported in **(2008) 3 of SCC 512**. But, here, the mistake committed by the University by issuing Annexure-P/3 Notification on 03.06.2019, showing the one and only post to be filled up by the EWS category, has been corrected taking the post back to the 'Unreserved' category as originally notified on 29.07.2016, as per Annexure A/2 'Corrigendum Notification' dated 15.07.2019. As it stands so, the Petitioner/Appellant cannot be heard to say that any prejudice has been caused to him, because of the issuance of the subsequent Notification, in any manner.
11. During the course of hearing, Shri Shrivastava, the learned counsel appearing for the University, submits that since it is a 'rolling notification' and the Petitioner / Appellant can still make an application, showing the particulars of fees already satisfied; adding that the University is ready to consider the same alongwith the applications of other eligible candidates who are having the requisite credentials. The learned counsel further asserts that since the post is only 'one', as notified, for the Assistant Professor – HRDC segment, there cannot be any reservation for OBC, EWS or any other categories and that the same will be filled up only by an 'Unreserved' candidate.

12. In the above circumstance, we find no tenable ground to call for interference in this appeal. Appeal fails and it is dismissed accordingly, making it clear that it is open for the Petitioner to make a fresh application giving all the relevant particulars in requisite manner, if is so advised and if he is desirous in this regard.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge