

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 678 of 2008**

1. Smt. Nivedita Gupta, wife of late Shri H. S. Gupta, aged about 68 years, Retired Professor (Philosophy) R/o 9, Anand Nagar, Telibandha Raipur, (C.G.)
2. A. S. Kalele, S/o Late Shri S. P. Kalele, aged about 68 years, Retired Professor, (Commerce), R/o Chobey Colony, Raipur, C.G.
3. M. K. Haajara, S/o Late Shri H.C. Haajara, aged about 68 years, Retired Professor(Commerce) R/o infront of Government Multipurpose School, Near Fire Brigade Chowk, Raipur, C.G.
4. V. S. Verma, S/o Shri S. R. Verma, aged about 68 years, Retired professor (Commerce), R/o infront of Bajrang Temple, Ramkund, Raipur, C.G.

---- Petitioners**Versus**

1. State Of Chhattisgarh, Through the Secretary, Department of Higher Education, D.K.S. Bhawan, Raipur, C.G.
2. Durga Education Society, Registered under the Chhattisgarh Societies Registration Adhiniyam, 1973, Through : its President, Durga Mahavidyalaya Campus, Raipur, C.g.
3. The Principal, Durga Mahavidyalaya, Raipur, C.G.
4. The Commissioner, Departmet of Higher Education (Non-Government College) Science College Campus, Raipur, C.G.

5. Pt. Ravishankar Shukla University, Through the registrar, Pt. Ravishankar Shukla University Campus, Raipur, C.G.

---- Respondents

For Petitioner	:	Mr. Harshwardhan Parganiha, Advocate.
For State/Res. No.1 & 4	:	Mr. Arijit Tiwari, PL
For Res. No.5	:	Mr. Aman Saxena, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

17.11.2021

1. The present is a second round of litigation by the four petitioners. The original claim of the petitioner before this High Court was by way of a writ petition WP 2560/2000.
2. The grievance of the petitioners was that they have been made to retire from service at the age of 60 contrary to the service rules governing the field as they were entitled to serve the establishment till they attained the age of 62 in terms of the order of the State government where they have enhanced the age of retirement from 60 to 62 years. Pending the aforesaid writ petition WP 2560/2000, this Court had granted an interim protection in favour of the petitioners vide order dated 31.10.2001 and they being taken back in service, for which the responsibility of payment of wages would be that upon the institution respondent no.5. Pursuant to the interim protection granted by his Court on 31.10.2001, the petitioners were permitted to rejoin the duties w.e.f. 07.11.2001 whereby in the light of the petitioners being taken back in service and they thereafter having worked till they reach the age of 62 years i.e. the date of superannuation as it was then. The writ petition was disposed

of as having become infructuous, so far as the issue of age of retirement is concerned. However, as regards the claim for the monetary benefit for the period particularly the date they had reached the age of 60 till they were permitted to rejoin on 07.11.2001, the petitioners were permitted to make a representation to the authorities and authorities were expected to take a decision. The petitioners, it is said have made representation to the respondent no.5 and the respondent no.5 in turn vide Annexure P-1 dated 18.08.2007 has rejected the claim of the petitioners for grant of monetary benefit leading to the filing of the present writ petition.

3. Today when the matter is taken up for hearing, learned counsel for the petitioners made a submission that issue involved in the present writ petition already stands settled by an order of the Division Bench of this Court in a bunch of Writ Appeals leading of which being the case of **U. K. Shrivastava & Others, W.A. No.224/2019** and other connected appeals decided on 24.10.2019.
4. The said bunch of Writ Appeals arose on account of a judgment rendered by this Court decided on 05.02.2019 in WPS 6587/2008 along with connected writ petitions. The Division Bench while deciding the appeal on 24.10.2019 have modified the order of single Bench to the extent of denial of salary for the intervening period and in paragraph 46 held as under :-

“46. In view of the facts and circumstances emerging from the records and discussions made above, Writ Appeal No.224 of 2019 filed by the employee is allowed in part and while upholding the order passed

by learned Single Judge except the order denying salary, it is held that the appellant will be entitled for the salary from 01.09.2001 to 31.08.2002 without any interest. The respondent-Institution is directed to make the payments within a period of three months from the date of production of copy of this order. Writ Appeal No.252 of 2019 filed by the Institution is hereby dismissed.”

5. Leaned counsel for the petitioner prays that present writ petition also has been filed on identical claim deserves to be allowed in terms of the order of the Division Bench in the aforesaid bunch of writ appeals.
6. State counsel as also the counsel appearing for the University do not dispute so far as the order of Division Bench and claim of the petitioner being identical. Though, the two counsels for the respondent have opposed the claim highlighting the aspect of applying the principle of “no work no pay”.
7. What is necessary at this juncture to be considered is that the bunch of writ appeals decided by the Division Bench arose from a judgment passed by this Court itself. This Court in the said writ petitions have denied granting the monetary benefit for the intervening period when the petitioners in the said writ petition were out of employment till they were taken back in service applying the principle of no work no pay. The Division Bench, however was of the view that denial of salary under such circumstances would not bring in the principle of no work no pay as there was a clear violation of Government instructions and orders so far as the age of superannuation is concerned in respect of the petitioners, which amounts to a denial of their right which they were

otherwise entitled for in terms of the statutes governing the service condition of the petitioners. Modifying the order of this Court the Division Bench had interfered with the order to the extent of granting also the monetary benefit for the intervening period that the appellants in those writ appeals were prevented from discharging their duties.

8. Given the aforesaid facts and circumstances of the case and also taking note of the observations made in paragraph 46 in the judgment of the writ appeal in the case of U. K. Shrivastava(Supra), this Court also of the view that present writ petition also being under identical set of facts and therefore it deserves to be allowed on identical terms. Accordingly, the petitioners would be entitled for the wages for the intervening period and in terms of the written submission by the State Government petitioner no.1 would be entitled for the wages for the period between 07.11.2001 to 30.06.2002. Likewise, petitioner no.2 would be entitled for wages for the period between 07.11.2001 to 30.11.2002. Similarly, petitioner no.3 would be entitled for the wages for the period between 07.11.2001 to 16.05.2002 and petitioner no.4 would be entitled for the wages for the period between 07.11.2001 to 30.06.2002. As has been held by the Division Bench in the aforementioned writ appeals, the petitioners would not be entitled for any interest on the said amount.

9. The writ petition accordingly stands partly allowed and disposed of.

Sd/-

P. Sam Koshy
Judge

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Sheet

MCC No. 308 of 2022

1. A.S. Kalele S/o Late Shri S.P. Kalele Aged About 68 Years Retired Professor, (Commerce), R/o Choubey Colony, Raipur Chhattisgarh.
 2. M.K. Haajara S/o Late Shri H.C. Haajara Aged About 68 Years Retired Professor (Commerce) R/o Infront Of Government Multipurpose School, Near Fire Brigade Chowk, Raipur Chhattisgarh.
 3. V.S. Verma S/o Shri S.R. Verma Aged About 68 Years Retired Professor (Commerce), R/o In Front Of Bajrang Temple, Ramkund, Raipur Chhattisgarh. (Petitioner No. 1 Smt. Nivedita Gupta, Wife Of Late Shri H.S. Gupta Has Been Died As Such Not Made Party To This Application For Restoration / Modification).
- Petitioners**

Versus

1. The State Of Chhattisgarh Through The Secretary, Department Of Higher Education D.K.S. Bhavan, Raipur Chhattisgarh.
 2. Durga Education Society Registered Under The Chhattisgarh Societies Registrikaran Adhiniyam, 1973, Through Its President, Durga Mahavidyalaya Campus, Raipur Chhattisgarh.
 3. The Principal Durga Mahavidyalaya, Raipur Chhattisgarh.
 4. The Commissioner Department Of Higher Education (Non - Government College) Science College Campus, Raipur Chhattisgarh.
 5. Pt. Ravishankar Shukla University Through The Registrar, Pt. Ravishankar Shukla University Campus, Raipur Chhattisgarh.
- Respondents.**

12.10.2022	Mr. Harshwardhan Parganiha, Counsel for Petitioners. Mr. Avinash K. Mishra, G.A. for the State. Mr. Shobhit Mishra, Counsel for Respondents No. 2 & 3. The instant MCC has been filed seeking modification to the Order dated 17.11.2021 passed in WP(S) No. 678/2008. Learned counsel appearing for the petitioners submits that while allowing the writ petition, this Court in the operative part, had mentioned that the petitioners would be entitled for the wages for the period starting

from 07.11.2001 onwards till the petitioners reach the age of 62, whereas for the said period, they have already got the salary. What the petitioners would have been entitled for, would be the salary for the period on which they attained the age of 60, till they were subsequently taken back in service by virtue of an interim order granted by the High Court.

The aforesaid factual matrix is not opposed by the counsel for the respondents No. 2 & 3. Though, they have a grievance as regards the payment to be received from the State Government as grant-in-aid institution.

As regards the payment part, the respondents No. 2 & 3 would have to take appropriate recourse available to them under law. As regards the error pointed out by the petitioners in the instant MCC, the same seems to be proper and justified. The order dated 17.11.2021 therefore stands modified to the aforesaid extent.

Accordingly, The petitioners are ordered to be entitled for the back wages for the period they were out of service from the date they attained the age of 60, till they came back in service by virtue of the interim order granted by this Court and for all other consequential benefits.

With the aforesaid modification, the present MCC stands allowed and disposed of.

Let the order passed in the present MCC be made part of WP(S) No. 678 of 2008.

Sd/-
(P. Sam Koshy)
JUDGE