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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 148 of 2021**

Chandra Shekhar Khare, S/o Shri Ganesh Ram Khare, Aged about 35 years, R/o Pamgarh, Police Station – Pamgarh, District – Janjgir-Champa (C.G.)

---- Appellant**Versus**

1. Indira Gandhi Krishi Vishwavidyalaya, Through – Vice-Chancellor, Krishak Nagar, Raipur, District - Raipur (C.G.)
2. Registrar, Indira Gandhi Krishi Vishwavidyalaya, Krishak Nagar, Raipur, District – Raipur (C.G.)
3. Director Instruction, Indira Gandhi Krishi Vishwavidyalaya, Krishak Nagar, Raipur, District – Raipur (C.G.)
4. Director Extension Services, Indira Gandhi Krishi Vishwavidyalaya, Krishak Nagar, District – Raipur (C.G.)

---- Respondents

(Cause-title taken from Case Information System)

For Appellant	:	Ms. Reena Singh, Advocate.
For Respondents	:	Mr. Shashank Thakur, Advocate.

Hon'ble Shri Arup Kumar Goswami, Chief Justice**Hon'ble Shri Justice Goutam Bhaduri, Judge****Judgment on Board****Per Arup Kumar Goswami, Chief Justice****24.11.2021**

Heard Ms. Reena Singh, learned counsel for the appellant. Also heard Mr. Shashank Thakur, learned counsel appearing for the respondents.

2. This appeal is presented against an order dated 04.03.2021 passed by the learned Single Judge in Writ Petition (S) No. 399 of 2021, dismissing the writ petition.

3. The proximate cause for filing the writ petition was for not granting permission to the petitioner to pursue Ph.D. course as a departmental candidate for the academic session 2020-21.
4. The appellant was appointed as a Farm Manager under the respondents by an order dated 07.10.2014 for a period of 2 years on probation.
5. Clause 30 under Chapter-10 of the Indira Gandhi Agriculture University, Teachers / Equivalent Posts and Administration Posts (Appointment and Upgradations Service Recruitment) Rules, 2009 provides that a person appointed to a service or post by recruitment shall ordinarily be placed on probation for a period to two years and Clause 31 provides that the appointing authority may for sufficient reasons extend the period of probation by a further period not exceeding one year. Clause 32 provides that the services of a probationer shall be terminated during the period of probation if in the opinion of the appointing authority he is not likely to shape into suitable Vishwavidalaya employee. Clause 33 provides that services of a probationer who is found unsuitable or his performance was not found satisfactory during the probation period shall automatically be terminated at the end of the period of his probation. It is also provided that on the successful completion of probation, the probationer shall automatically be confirmed in the services or post to which he has been appointed.
6. Though more than 3 years had elapsed, the appellant was allowed to continue in service without passing any order of confirmation and it is in that circumstance, the appellant filed a writ petition before this Court, registered as Writ Petition (S) No. 4358 of 2020, which was disposed of by an order dated 23.11.2020 directing the respondents to take a decision with regard to the claim of the appellant for confirmation of service within a period of 60 days from the date of receipt of the copy of the order.

7. Pursuant thereto, by an order dated 03.03.2021, the appellant was confirmed with retrospective effect from 08.10.2016.

8. So, the position that has emerged is that the appellant is a confirmed employee of the respondents with effect from 08.10.2016.

9. There is a guideline for Ph.D. course admission which was approved in the 104th meeting of the Board of Management dated 20.03.2017 and the guideline is called 'The New Guideline for Ph.D. Admission for Assistant Professor / Scientist / Subject Matter Specialist (SMS) / Technical Assistant / Farm Manager / Programme Assistant / RA / SRF / JRF working at Indira Gandhi Krishi Vishwavidyalaya, Raipur (C.G.)'. Clauses 2 and 5 of the same are relevant for the purpose of consideration of this case and therefore, they are extracted herein:

"2. At any time maximum of 10% staff of the respective department will be permitted to get study leave to pursue Ph.D. Programme with course work from other University (other than IGKV) in a calendar year. Besides this, two persons will be allowed to pursue Ph.D. programme with course work from IGKV in a calendar year in each department subject to availability of seats.

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5. Study leave shall be granted after a minimum of 03 years of continuous service and have cleared the probation period, to pursue a special line of study or research directly related to his/her work in the University or to make a special study of the various aspects of this discipline/specialization. The three year service period to

be calculated from the date of his/her resuming duty to last date of submission of application for study leave. In computing the length of service, the service period during which a person was on probation or engaged as Teacher/Scientist will be counted, provided there is no break in-service.”

10. Ms. Singh submits that though the appellant has been regularly filing application seeking permission to pursue Ph.D., without justifiable reason he has been denied to pursue the course. It is submitted by her that for the year 2020-21 also the appellant had sought permission, but on that occasion also permission was refused which prompted the appellant to approach this Court. It is submitted that learned Single Judge, on an erroneous interpretation of the guideline, rejected the case of the appellant. It is submitted by her that for the year 2021-22 also the appellant had submitted an application for grant of permission and his case again has not been favourably considered. It is submitted that unless the findings of the learned Single Judge is not interfered with, no useful purpose will be served even if the appellant choses to assail rejection of his case for the year 2021-22.

11. Ms. Singh contends that the appellant has fulfilled the eligibility criteria as set out in Clause 5 of the Guideline and therefore, the learned Single Judge was not justified to hold that the appellant had not completed 3 years of continuous service.

12. *Per contra*, Mr. Thakur submits that the appellant was suspended by an order dated 30.06.2018 on the ground that the appellant was arrested and detained in custody for more than 48 hours in Crime No. 216 of 2017 under Section 420 of I.P.C. It is also submitted by him that the appellant challenged the suspension order by filing Writ Petition (S) No. 3718 of 2020

and the learned Single Judge of this Court by an order dated 22.09.2020 had directed the respondents to pass an order in conformity with paragraph 21 of the judgment passed by the Hon'ble Supreme Court in the case *Ajay Kumar Choudhary vs. Union of India through its Secretary & Another*, reported in *(2015) 7 SCC 291*. He has submitted that pursuant thereto, the respondent authorities had passed an order reinstating the appellant with effect from 03.10.2020. He has also drawn the attention of the Court to order dated 31.10.2020 annexed as Annexure R/2 of the affidavit of the respondents before the learned Single Judge to contend that the suspension period is not yet regularized and that how the period of suspension would be regulated shall be decided after completion of criminal case pending against the appellant. Accordingly, it is submitted that there is break-in-service during the period of suspension and thus, the appellant has not completed 3 years of continuous service and therefore, appellant is not eligible to be considered for pursuing Ph.D. course.

14. We have considered the submission of the learned counsel for the parties and have perused the materials on record.

15. The only issue that is to be considered is whether the appellant had completed 3 years of continuous service from the date of joining his duty till the last date of submission of application. It is evident that the appellant was under suspension from 19.06.2018 till 31.10.2020 and therefore, the date of initial joining in the year 2014 cannot be taken into consideration. In the absence of any order holding the appellant to be as on duty during the suspension period, the suspension period has to be excluded for the present for the purpose of calculation of continuous service. When the application for grant of permission was filed in June, 2020, the appellant continued to remain under suspension.

16. In that view of the matter, we are of the considered opinion that the appellant had not completed the period of 3 years of continuous service as is required in terms of Clause 5 of the guideline at the time of filing of the application for grant of permission for pursuing Ph.D. course.

17. In view of the above discussion, we find no merit in this appeal and accordingly, the appeal is dismissed. No cost.

Sd/-
(Arup Kumar Goswami)
Chief Justice

Sd/-
(Goutam Bhaduri)
Judge