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HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 5189 of 2018

Order reserved on 17.09.2026

Order delivered on 27.10.2026.

Ramsingh Yadav S/o S/o Late Shri Budhram Yadav Aged About 50 Years R/o Danganiya Near Sai Mandir Raipur, District Raipur, Chhattisgarh., District : Raipur, Chhattisgarh

... Petitioner(s)

versus

1. State Of Chhattisgarh Through The Secretary, Department Of Higher Education, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur, Chhattisgarh., District : Raipur, Chhattisgarh

2. Director, Directorate Of Higher Education, Indrawati Bhawan, Naya Raipur, District Raipur, Chhattisgarh., District : Raipur, Chhattisgarh

3. Pandit Ravishankar Shukla University, Raipur, Through The Registrar, Pandit Ravishankar Shukla University, Raipur, Chhattisgarh., District : Raipur, Chhattisgarh

... Respondent(s)

For Petitioner(s)	:	Mr. D.R. Patel, Advocate
For Respondent(s)	:	Mr. Lav Sharma, Panel Lawyer
For Respondent (s)	:	Mr. Sharad Mishra, Advocate

Hon'ble Shri Justice Narendra Kumar Vyas

CAV Order

1. The petitioner has filed this petition under Article 226 of the Constitution of India assailing the order dated 16.04.2013 (Annexure P/1) passed by Pandit Ravishankar Shukla University, Raipur/ respondent No.3 by which it has imposed punishment of compulsory retirement upon the petitioner as per Clause 57 (1) (e) of the statue No. 31 of the University and also order dated 11.07.2018 (Annexure P/2) by which the representation of the petitioner has been rejected.

2. Facts of the case in brief are that;-

(a) The petitioner was appointed on the post of Chowkidar on 06.07.2002 in the pay scale of Rs. 2550-55-2660-60-3200/- on probation period of two years and after completion of probation period, he was made permanent on 08.07.2004. A show cause notice on 09.08.2011 alleging that he was absent from duty on 07.06.2011 to 04.08.2011 was issued to him, which was replied by the petitioner on 12.08.2011 informing that he was ill from 07.06.2011 to 04.08.2011 and also suffered heart pain, as such without permission from the administration he has taken leave from 02.05.2011 to 20.05.2011 and prayed for condoning his absence.

(b) The respondent was not satisfied to the reply therefore, a charge sheet dated 09.05.2012 was issued to him alleging five allegations with regard to his absenteeism on various dates, as it is misconduct under Chhattisgarh Civil Service Conduct Rules, 1966 and it amounts to willful negligent of duty as per statue 31 of the University. The respondent No.3 to conduct the enquiry into the allegation leveled

against the petitioner has appointed Assistant Registrar of the University as Enquiry Officer and Sr. Superintendent, Mahendra Kumar Bhide as Presiding Officer vide order dated 23.04.2012.

(c) The University after considering the material on record vide its order dated 10.09.2012 has imposed punishment on the petitioner, treated the period of 461 days from 07.06.2011 to 09.09.2012 as dies non and stoppage of one increment without cumulative effect and was directed to submit undertaking that he will not repeat the misconduct in future.

(d) The petitioner submitted an affidavit on 10.09.2012 and reported for duty on 10.09.2012 and all of a sudden on 21.01.2013, 3 months advance notice was given to the petitioner for compulsorily retirement from service considering the previous absenteeism as negligence from duty and it is a misconduct as provided in the statue 31 clause 13 (a) (i) and also amounting to gross indiscipline. It has also been taken into consideration in the notice for compulsory retirement that absent of 480 days has been treated as dies non and also taken into consideration imposition of punishment of one increment without cumulative effect. Thereafter the impugned order dated 16.04.2013 (Annexure P/1) was passed. Being aggrieved with this order, the petitioner has preferred a representation on 29.06.2018 which has been rejected by the Respondent No.3 on 11.07.2018. Hence, this petition challenging both the orders.

3. The University has filed its reply contending that the performance of the petitioner throughout the career was unsatisfactory and he remained absent from service for so many occasions as mentioned in

the return which is not disputed by the petitioner also. It has also been contended that due to absenteeism of the petitioner from service the work of the university was adversely affected. The respondent has already taken a lenient view still performance of the petitioner was not improving, therefore, there was no other option for the respondent No.3 except to compulsory retire the petitioner. It has also been contended that the order dated 16.04.2013 was passed after due consideration of the petitioner's overall service record, previous conduct. It has been further submitted that the impugned order has been passed in accordance with the Rule applicable to the petitioner and it has been prayed for dismissal of the petition.

4. Learned counsel for the petitioner would submit that the order passed by the respondent is illegal and contrary to the fact of the case and without following due process of law. He would further submit without conducting any enquiry against the petitioner, he has been terminated from the service as statue 31 regulation 13(a)(i) the compulsory retirement is misconduct, as such it is incumbent upon the respondent No. 3 to initiate departmental enquiry but without conducting any enquiry the punishment of compulsory retirement has been issued which is violation of Rule 57(I) of the statue of the University which is binding in nature between the parties. He would further submit that it is well settled position of law that the order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable and the order of compulsory retirement shall not be imposed as punitive measure. He would further submit that before passing of the order impugned the subjective satisfaction

of the authority has not been recorded by giving sufficient and cogent reasons and even the order of compulsory retirement has been passed in a cavalier manner and the same is non-speaking, unreasoned order and would pray for quashing of the impugned order dated 16.4.2013 and order dated 11.07.2018 (Annexure P/2). To substantiate his submission, he would refer to the judgment rendered by Hon'ble the Supreme Court in case of **S.S. Das vs. Union of India reported 2026 SCC Online SC 1809** and judgment of this High Court in the case of **State of Chhattisgarh and others vs. Sandeep Mishra** decided on 12.03.2026 in **Writ Appeal No. 212 of 2026.**

5. On the other hand, learned counsel for the University would submit that as per clause 57 of statue 31 of the University the compulsory retirement is a major penalty which has rightly been imposed upon the petitioner and would pray for dismissal of the writ petition. Learned counsel for the respondents has vehemently submitted that the University was justified and in compulsory retiring the petitioner in view of clause 10 (12) as this clause empowers the University to terminate the permanent employee of the university after giving 3 months notice and in absence of three months notice the university has to pay three months salary. This clause further provides that notice is not necessary when the employee has been removed, terminated or compulsory retired from service, as such he would submit that action of the University is legal and justified. To substantiate his submission, he would refer to the judgment rendered by Hon'ble the Supreme Court in case of **Baikuntha Nath Das v. District Medical Officer reported in 1992(2) SCC 299, State of**

Gujarat v. Umedbhai M. Patel reported in 2001 (3) SCC 314, Posts and Telegraphs Board v. C.S. N. Murthy reported 1992 (2) SCC 317, Union of India v. Dulal Dutt, reported in 1993(2) SCC 179.

6. I have heard learned counsel for the parties and perused the documents placed on record with utmost satisfaction.

7. From the submission made by the parties the points emerged for determination is;-

(i)Whether the University was justified in imposing punishment of compulsory retirement as per clause 57(1)(e) of Rule 13 of statue 31 without enquiry?

(ii) Whether the petitioner is entitled to get back wages or not?.

8. It is well settled legal position of law that service condition of the employee of the University is governed by statue framed under Section 35 of the Chhattisgarh Viswavidayalaya Adhiniyam, 1973 which has legal force and binding upon the University and its employee. The Hon'ble Supreme Court in the case of **Vidya Ram Misra v. Managing Committee, Shri Jai Narain College reported in 1972 (1) SCC 623** has examined the legal force of the statue framed under the Lucknow Univerity Act, 1920 as well as Saugar University Act and has held as under in paragraph-9.

9. Mr. Setalvad contended that since the college in question is affiliated to a statutory body, namely, the University of Lucknow,and is governed by the relevant statutes and ordinances framed under the provisions of Lucknow University Act, 1920, any violation of the statute or the ordinance in the matter of terminating the services of a teacher would attract the jurisdiction of the High Court under Article 226 of the Constitution as statutes and ordinances have the force of law. In support of this, counsel relied upon the decision of this Court in Prabhakar Ramkrishan Jodh vs. A.L. Pande and another (1965 (2) SCR 713). The appellant before this Court in that case was a teacher in a college affiliated to the University of Saugar and managed by the Governing Body established under the provisions of the relevant ordinance made

under the University of Saugar Act. Certain charges were framed against the appellant by the Principal of the College and he was asked to submit his explanation. The appellant in his explanation denied all the charges and requested for particulars on which one of the charges was based. The particulars were not supplied and the Governing Body terminated his services without holding any enquiry. The appellant moved the High Court under Article 226 of the Constitution for a writ quashing the order of the Governing Body and for his reinstatement. He contended that the Governing Body had made the order in violation of the provisions of Ordinance 20, otherwise called the 'College Code, framed under section 32 of the University of Saugar Act read with section 6 (6) of that Act. Clause 8 (vi (a) of the College Code provided that the Governing Body of the college shall not terminate the services of a confirmed teacher without holding an enquiry and without giving him an opportunity of defending himself. The High Court held that the conditions of service of the appellant were governed not by the 'College Code' but by the contract made between the Governing Body and the appellant under clause 7 of the College Cod&-which stated that all teachers of the college shall be appointed under a written contract in the form prescribed-, that the provisions of the 'College Code' were merely conditions prescribed for affiliation of colleges and that no legal rights were created by the 'College Code' in favour of the teachers of the affiliated colleges as against the Governing Body. The High Court, therefore, dismissed the petition. In appeal to this Court it was held that the 'College Code' had the force of law and that it not merely regulated the legal relationship between the affiliated colleges and the University but also conferred legal rights on the teachers of affiliated ,colleges. The Court further said "It is true that Clause 7 of the Ordinance provides that all teachers of affiliated colleges shall be appointed on a written contract in the form prescribed in Sch. A but that does not mean that teachers have merely a contractual remedy against the Governing Body of the College. On the other hand, we are of opinion that the provisions of Clause 8 of the Ordinance relating to security of the tenure of teachers are part and parcel of the teachers' service conditions....." When once this Court came to the conclusion that the 'College Code' had the force of law and conferred rights on the teachers of affiliated colleges, the right to challenge the order terminating the services of the appellant, passed in violation of clause 8 (vi) (a) of the 'College Code' in a proceeding under Article 226 followed 'as the night the day' and the fact that the appellant had entered into a contract was considered as immaterial.

9. The record of the case would demonstrate that statue 31 (Annexure D/1) has been framed framed by the University in exercise of power conferred to it as under Section 35 of the Chhattisgarh Viswavidayalaya Adhiniyam, 1973, as such it has legal force and

binding upon the University and its employees. Therefore, the service condition of the petitioner has to be governed by the Rules made in the statue. Clause 57 of the statue provides the punishment which can be imposed upon the employee of the University which reads as under:-

Statue 31 of clause 57 (1) (e) :-

57(1) नियुक्तिकर्ता अधिकारी पर्याप्त कारणों से एक कर्मचारी पर निम्नलिखित दंड आरोपित कर सकता है :

(अ) निंदा, भर्त्सना

(ब) संबंधित कर्मचारी के लापरवाही अथवा कानून के उल्लंघन के कारण यदि विश्वविद्यालय को आर्थिक क्षति पहुंचती है तो संबंधित कर्मचारी के वेतन से पूर्णतः या अंशतः भरपाई की जा सकती है।

(स) वेतनवृद्धि रोकी जा सकती है।

(द) पद श्रेणी या समयमान वेतनमान का निम्न स्तर

(इ) अनिवार्य सेवानिवृत्ति

(य) सेवा से पृथक करना

(ल) सेवा से बर्खाश्त करना जिसका यह तात्पर्य होगा कि विश्वविद्यालय के किसी भी सेवा के लिए भविष्य में अयोग्य माना जावेगा। इसके अलावा चतुर्थ श्रेणी कर्मचारी पर लापरवाही समय की पाबंदी न हो, आलस्य करना अथवा अन्य किसी छोटे प्रकृति के दुर्व्यवहार पर दंडस्वरूप अर्थदण्ड, अधिकतम 5 रूपये आरोपित किया जा सकता है।

(2) विश्वविद्यालय के किसी कर्मचारी के विरूद्ध नियुक्तिकर्ता संस्थापित कर सकता है। अनुशासनात्मक कार्यवाही

(3) <u>म.प्र. शासन द्वारा शासकीय सेवक को दंड देने की निर्धारित प्रक्रिया जो नियुक्तिकर्ता अधिकारी द्वारा संबंधित कर्मचारी के विरूद्ध जांच के समय प्रभावशील हो के अतिरिक्त उपर्युक्त उपखण्ड (sub para) में विनिर्दिष्ट दंडों के अलावा कोई दंड आदेश नहीं दिया जाएगा</u>।

10. From perusal of the clause 3 of clause 57 of the statue, it is quite vivid that the procedure which is provided for imposition of penalty upon the Government servant by the Government has to be followed and no additional penalty which has been described in the foregoing paragraph can be imposed upon the employee of the University. The Rule-14 of the Civil Service Classification (Control and Appeal) Rule 1966 provides procedure for imposition of penalty. The Rule 14 provide for imposition of major penalty. The Rule 14 is reproduced below:-

14. Procedure for imposing penalties.

(1) No order imposing any of the penalties specified in clauses (v) to (ix) of Rule 10 shall be made except after an inquiry held, as far as may be, in the manner provided in this rule and Rule 15 or in the manner provided by the Public Servants' (Inquiries) Act, 1850 (37 of 1850), where such inquiry is held under that Act.
(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself inquire into or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to Inquire into the truth thereof.Explanation. - Where the disciplinary authority itself holds the inquiry, any reference in sub-rule (7) to sub-rule (20) and in sub-rule (22) to the inquiring authority shall be construed as a reference to the disciplinary authority.
(3) Where it is proposed to hold an inquiry against a Government servant under this rule and Rule 15, the disciplinary authority shall draw up or cause to be drawn up-(i)the substance of the imputation of misconduct or misbehaviour into definite and distinct articles of charge;
(ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain :-
(a) a statement of all relevant facts including any admission or confession made by the Government servant;
(b) a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained.
(4) The disciplinary authority shall deliver or cause to be delivered to the Government servant a copy of the article of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which article of charge is proposed to be sustained and shall require the Government

servant to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person.

5(a) On receipt of the written statement of defence, the disciplinary authority may itself inquire into such of the articles of charge as are not admitted or, if it considers it necessary so to do, appoint, under sub-rule (2), an inquiring authority for the purpose; and where all the articles of charges have been admitted by the Government servant in his written statement of the defence the disciplinary authority shall record its finding on each charge after taking such evidence as it may think fit and shall act in the manner laid down in Rule 15;

(b) If no written statement of defence is submitted by the Government servant, the disciplinary authority may itself inquire into the articles of charge or ma;, if it considers it necessary to do so, appoint, under sub-rule (2), an inquiring authority for the purpose;

(c) Where the disciplinary authority itself inquires into any article of charge or appoints an inquiring authority for holding an inquiry into such charge, it may, by an order, appoint a Government servant or a legal practitioner, to be known as the "Presenting Officer" to present on its behalf the case in support of the articles of charge.

(6) The disciplinary authority shall, where it is not the inquiring authority, forward to the inquiring authority-

(I) a copy of the articles of charge and the statement of the imputations of misconduct and misbehaviour;

(ii) a copy of the written statement of defence, if any, submitted by the Government servant;

(iii) a copy of the statements of witnesses, if any, referred to in sub-rule (3); (iv) evidence providing the delivery of the documents referred to in sub-rule (3), to the Government servant; and a copy of the order appointing the "Presiding Officer"

(7) The Government servant shall appear in person before the inquiring authority on such day and at such time within ten working days from the date of receipt by him of the articles of charge and the statement of the imputations of misconduct or misbehaviour, as the inquiring authority may, by a notice in writing specify in that behalf, or within such further time, not exceeding ten days, as inquiring authority may allow.

(8)The Government servant may take the assistance of any other Government servant to present the case on his behalf, but may not engage a legal practitioner, for the purpose unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner, or, the disciplinary authority, having regard to the circumstances of the case, so permits.

(9)If the Government servant who has not admitted any of the articles of charge in his written statement of defence or has not submitted any written statement of defence, appears before the inquiring authority, such authority shall ask him whether he is guilty to any of the articles of charge, the inquiring authority shall record

the plea, sign the record and obtain the signature of the Government servant thereon.
(10)The inquiring authority shall return a finding of guilt in respect of these articles of charge to which the Government servant pleads guilty.
(11)The inquiring authority, shall, if the Government servant fails to appear within the specified time or refuses or omits to plead, require the Presiding Officer to produce the evidence by which he proposes to prove the articles of charge, and shall adjourn the case to a later date not exceeding thirty days, after recording an order that the Government servant may, for the purpose of preparing his defence-(i)inspect within five days of the order or within such further time not exceeding five days as the inquiring authority may allow, the documents specified in the list referred to in sub-rule (3);
(ii) submit a list of witnesses to be examined on his behalf.Note.-If the Government servant applies orally or in writing for the supply of copies of the statements of witnesses mentioned in the list referred to in sub-rule (3), the inquiring authority shall furnish him with such copies as early as possible and in any case not later than three days before the commencement of the examination of the witnesses on behalf of the disciplinary authority.
(iii)Give a notice within ten days of the order or within such further time not exceeding ten days as the inquiring authority may allow, for the discovery or production of any documents which are in the possession of Government but not mentioned in the list referred to in sub-rule (3).Note. - The Government servant shall indicate the relevance of the documents required by him to be discovered and produced by the Government.
(12) The inquiring authority shall, on receipt of the notice for the discovery or production of documents forward the same or copies thereof to the authority in whose custody or possession the documents are kept, with a requisition for the production of the documents by such date as may be specified in such requisition :Provided that the inquiring authority may, for reasons to be recorded by it in writing, refuse requisition to such of the documents as are, in its opinion, not relevant to the case.
(13)On receipt of the requisition referred to in sub-rule (12), every authority having the custody or possession of the requisitioned documents shall produce the same before the inquiring authority :Provided that if the authority having the custody or possession of the requisitioned documents is satisfied for reasons to be recorded by it in writing that the production of all or any of such documents would be against the public interest or security of the State, it shall inform the inquiring authority accordingly and the inquiring authority shall, on being so informed, communicate the information to the Government servant and withdraw the requisition made by it for the production or discovery of such documents.
(14) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge arc proposed to be

proved shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Officer and may be cross-examined by or on behalf of the Government servant. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined but not on any new matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses as it thinks fit.

(15) If it shall appear necessary before the close of the case on behalf of the disciplinary authority, the inquiring authority may, in its discretion, allow the Presenting Officer, to produce evidence riot included in the list given to the Government servant or may itself call for new evidence or recall and re-examine any witness and in such case the Government servant shall be entitled to have if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence, exclusive of the day of adjournment and the day to which the enquiry is adjourned. The inquiring authority shall give the Government servant an opportunity of inspecting such documents before they are taken on the record. The inquiring authority may also allow the Government servant to produce new evidence, if it is of the opinion that the production of such evidence is necessary in the interest of justice.Note. - New evidence shall not be permitted or called for or any witness shall not be recalled to fill up any gap in the evidence. Such evidence may be called for only when there is an inherent lacuna or defect in the evidence which has been produced originally.

(16) When the case for the disciplinary authority is closed, the Government servant shall be required to state his defence, orally or in writing, as he may prefer. If the defence is made orally, it shall be recorded and the Government servant shall be required to sign the record, in their case, a copy of the statement of defence shall be given to the Presenting Officer, if any, appointed.

(17)The evidence on behalf of the Government servant shall then be produced. The Government servant may examine himself in his own behalf if he so prefers. The witnesses produced by the Government servant shall then be examined and shall be liable to cross-examination, re-examination and examination by the inquiring authority according to the provisions applicable to the witnesses for the disciplinary authority.

(18) The inquiring authority may, after the Government servant closes his case, and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him.

(19) The inquiring authority may, after the completion of the production of evidence, hear the Presenting Officer, if any, appointed, and the Government servant or permit them to file written briefs of their respective case, if they so desire.

(20) If the Government servant to whom a copy of the articles of charge has been delivered, does not submit the written statement of defence on or before the date specified for the purpose or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of this rule, the inquiring authority may hold the inquiry ex-parte.
(21)(a)Where a disciplinary authority competent to impose any of the penalties specified in clauses (i) to (iv) of Rule 10 (but not competent to impose any of the penalties specified in clauses (v) to (ix) of Rule 10); has itself inquired into or the articles of any charge and that authority, having regard to its own finding or having regard to its decision on any of the findings of any inquiring authority appointed by it, is of opinion that the penalties specified in clauses (v) to (ix) of Rule 10 should be imposed on the Government servant, that authority shall forward the records of the inquiry to such disciplinary authority as is competent to impose the last mentioned penalties.(b)The disciplinary authority to which the records are so forwarded may act on the evidence on the record or may, if it is of the opinion that further examination of any of the witnesses if necessary in the interests of justice, recall the witness and examine, cross-examine and re-examine the witness and may impose on the Government servant such penalty as it may deem fit in accordance with these rules.
(22) Whenever any inquiring authority, after haying heard and recorded the whole or any part of the evidence in an inquiry ceases to exercise jurisdiction therein, and is succeeded by another inquiring authority which has, and which exercises, such jurisdiction, the inquiring authority so succeeding may act on the evidence so recorded by its predecessor, or partly recorded by itself :Provided that if the succeeding inquiring authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interest of justice, it may recall, examine, cross-examine and re-examine any such witnesses as hereinbefore provided.
(23)(i)After the conclusion of the inquiry, a report shall be prepared and it shall contain-
(a)the articles of charge and the statement of the imputations of misconducts or misbehaviour;
(b)the defence of the Government servant in respect of each articles of charge;
(c)an assessment of the evidence in respect of each article of charge; and
(d)the finding on each article of charge and the reasons therefor.Explanation. - If in the opinion of the inquiring authority the proceedings of the inquiry establish an article of charge different from the original articles of the charge, it may record its finding on such article of charge :Provided that the finding on such article of charge shall not be recorded unless the Government servant has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge.

(ii)The inquiring authority where it is not itself the disciplinary authority, shall forward to the disciplinary authority the records of inquiry which shall include-(a)the report prepared by it under clause (i);(b)the written statement of defence, if any, submitted by the Government servant;(c)the oral and documentary evidence produced in the course of the inquiry;(d)written briefs, if any, filed by the Presenting Officer or the Government servant or both during the course of inquiry; and
(e)the orders, if any, made by the disciplinary authority and the inquiring authority in regard to the inquiry.

11. Rule 10 (i) of the said Rule classifies the penalty which can be imposed upon the government servant. The Rule 10 (vii) prescribed compulsory retirement and Rule 14 of the said rules provides that no order imposition any of the penalty in clause (v) to (ix) of the Rule 10 shall be made except after enquiry held as far as may be in the manner provided in this rule and Rule 15 or in the manner provided by the public servant Enquaries Act,1850 (37 of 1850) where such enquiry is held under that enquiry. Thus it is incumbent upon the respondent No. 3 to conduct departmental enquiry before imposition of major penalty of compulsory retirement.

12. The submission made by learned counsel for the University deserves to be rejected in view of the fact that for the misconduct as alleged in the notice dated 21.01.2013 (Annexure P/10), the Respondent No. 3 has already considered the absent and imposed a punishment of withholding of one increment without cumulative effect and absent for the said period has been treated as “dies non” after conducting enquary vide order dated 10.09.2012 (Annexure P/9) thereafter reiterating the same fact issuance of notice for compulsory retirement is not sustainable. Even the respondent No. 3 in his punishment order dated 16.04.2013 has taken into consideration clause 57 (1)(e) of the Statue 31 which provides penalty. Thus the compulsory retirement has

been issued by way of punishment treating the petitioner as deadwood for the university, therefore, it is incumbent upon university to conduct departmental enquary and the university cannot adopt a shortcut method to apply washed off theory.

13. Considering the well settled legal position of law that compulsory retirement is not punishment but it is purely an administrative mechanism design to maintain efficiency and integrity in public administration by chopping off deadwood. It is also not penal or punitive action as the retired officer does not lose any their earned pensioner or retiral dues. Therefore, the action does not carry any civil consequence but when the disciplinary authority has compulsory retired the employee by way of penalty then it has to follow the due process of enquiry. The Hon'ble Supreme Court in the case of **State of Gujarat vs. Umedbhai M.Patel reported in 2001 (3) SCC 314** has held as under:-

> 11. The law relating to compulsory retirement has now crystallized into definite principles, which could be broadly summarised thus:-
>
> (i) Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest.
>
> (ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.
>
> (iii) For better administration, it is necessary to chop off dead-wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer.
>
> (iv) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.
>
> (v) Even uncommunicated entries in the confidential record can also be taken into consideration.

(vi) The order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable.

(vii) If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.

(viii) Compulsory retirement shall not be imposed as a punitive measure.

14. Again the Hon'ble Supreme Court in the case of **S.S. Das vs. Union of India reported in 2026 SCC Online SC 1809** has held as under:-

41. Our understanding of the law is this. The proposition that an order of compulsory retirement in public interest is non-punitive does not elevate itself into a mantra which, by its mere invocation, can validate such order and repel all challenges laid to it. Exercise of power, which is non-punitive, nevertheless remains bound by the precincts of a public power. The object of compulsory retirement is to enable the administration to dispense with the services of public servants who, when viewed in the prism of public interest, have been rendered dead wood and, thus, outlived their utility. Either the public servant who is ordered compulsory retirement has, by passage of time, become inefficient to perform the duties and functions entrusted to him or his integrity is doubtful – these are the prime criteria triggering the need for such an order. However, a promotion earned on merits, and not by dint of seniority alone, immediately prior to such order of compulsory retirement being made would, by itself, render the order susceptible to invalidity. This is for the reason that the merit-based promotion, not long ago, would stand as proof of a recent and objective assessment of the entire service record and a finding that the servant is fit for shouldering higher responsibilities, which is irreconcilable with the finding and thus negates the very foundation of the order, namely, that the servant has become dead wood, or is of doubtful integrity, and has outlived his utility. Any order of compulsory retirement partaking the character of a backdoor disciplinary proceeding, clandestinely avoiding the safeguards embodied in Article 311 of the Constitution, would be indefensible.

15. Considering the judgment of the Hon'ble Supreme Court and considering the order passed by the respondent No.3 it is quite vivid that the same was passed by way of punishment and major penalty has been imposed upon the petitioner which cannot be imposed without conducting the regular departmental enquiry . Therefore, I am

of the view that the impugned order dated 16.04.2013 (Annexure P/1) and subsequent rejection of representation dated 11.07.2018 (Annnexure P/2) deserve to be quashed and accordingly and they are quashed.

16. Now further submission of the petitioner that since the petitioner has wrongly been terminated from service without enquiry therefore, he should be reinstated with full back wages is being considered by this Court.

17. The record of the case would show that the compulsory retirement order was passed on 20.04.2013 and the petitioner has preferred the representation in the year 2018 which has been rejected on 11.07.2018 and thereafter this writ petition was filed on 29.07.2018 after lapse of 5 years of imposition of punishment which itself is sufficient ground for this Court to deny the back wages. Even otherwise, the petitioner has neither pleaded in the petition that he is out of employment after termination and despite his attempt to seek employment, he was not able to find out any employment, therefore, I am of the view that the petitioner is not entitled to get any back wages for the period he remained out of employment but he will be reinstated in service without back wages with continuity of service and his salary shall be fixed notionally.

18. It is well settled legal position of law that while quashing the termination order the grant of back wages, no rigid formula for grant of back wages can be applied and it is dependable upon the facts and circumstances of each case. The view of this Court is fortified by the law laid down by **Hon’ble the Supreme Court in case of Pradeep**

Vs. Manganese Ore (India) Limited & others, reported in (2022) 3 SCC 683, wherein it has been held at paragraph 12 as under:-

> 12. It is, undoubtedly, true when the question arises as to whether the backwages is to be given and as to what is to be the extent of backwages, these are matters which will depend on the facts of the case as noted in Deepali Gundu Surwase (supra). In a case where it is found that the employee was not at all at fault and yet, he was visited with illegal termination or termination which is actually activised by malice, it may be unfair to deny him the fruits of the employment which he would have enjoyed but for the illegal / malafide termination. The effort of the Court must be to then to restore the status quo in the manner which is appropriate in the facts of each case. The nature of the charges, the exact reason for the termination as evaluated and, of course, the question as to whether the employee was gainfully employed would be matters which will enter into the consideration by the Court."

19. Accordingly, the petition is allowed in part. The order dated 16.04.2013 (Annexure P/1), order dated 11.07.2018 (Annexure P/2) are set aside. The respondents are directed to reinstate the petitioner in service without back wages but continuity of service and fixation of wages notionally within a period of 2 months from the date of production of certified copy of this order.

Sd/-

(Narendra Kumar Vyas)
Judge

santosh