

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition No. 1418 of 2004****Reserved on 22.07.2020****Delivered on 31.07.2020**

Dr. V. K. Dixit S/o Shri B. P. Dixit, Technical Officer, School of Studies in Economics, Pt. Ravishankar Shukla University, Raipur, Tahsil & District Raipur.

---- Petitioner

Versus

1. Pt. Ravishankar Shukla University, Raipur, through its Vice Chancellor, Tahsil and District Raipur (CG)
2. The Vice Chancellor, Pt. Ravishankar Shukla University, Raipur, Tahsil and district Raipur
3. The Registrar, Pt. Ravishankar Shukla University, Raipur, Tahsil and District, Raipur
4. The Head, School of Studies in Economics, Pt. Ravishankar Shukla University, Raipur
5. Shri Rajesh Sharma S/o Shri Kapil Sharma, Lower Division Clerk, Pt. Ravishankar Shukla University, Raipur, R/o Ameri Bada, Brahmanpara, Raipur.

---- Respondents

For Petitioner	:	Mr. Upendranath Awasthi, Senior Advocate with Ms. Renu Kocher, Advocates
For University	:	Mr. Neeraj Choubey, Advocate

Hon'ble Shri Justice P. Sam Koshy**CAV ORDER**

1. The present writ petition was initially filed claiming for the following reliefs:

a) That, the Hon'ble Court may be pleased to issue rule nisi commanding the Respondents 1 & 2 to produce all files and papers on the subject of his appointment to the post of Senior Technical Assistant in School of Studies in Economics (Teaching Department) of Pt. Ravishankar Shukla University, Raipur for perusal of this Hon'ble Court and to make sufficient return within such time as may be prescribed.

b) The Hon'ble Court on failure of the Respondents 1 & 2 to make a sufficient return and after hearing parties be pleased to issue an appropriate writ or order or direction in the nature or writ etc. commanding the Respondents 1 & 2:

b.1) To consider the matter of appointment of the petitioner to the post of Senior Technical Assistant in School of Studies in Economics (Teaching Department) of the University in accordance with Rules since 2.6.88 when order No. 3/37/Gen. Admn./88 dated 2.6.88 was prepared and signed by proper authorities but before it was dispatched it was crossed and filed?

b.2) After fixing his proforma seniority since 2.6.88, monetary benefits to the petitioner should be allowed since 22.07.93, when he was appointed on daily wages against the vacant & sanctioned post of Senior Technical Assistant and allowed to work continuous till issuance of order impugned dated 2.5.98 (Annexure P/15).

b.3) Petitioner should be allowed Technical Officer on 2.5.98 instead of 21.01.2002 as shown in Annexure P-36 dated 21.01.2002 and in support of the above Annexure P-37 dated

17.10.97 and Annexure P-38 dated 23.01.1998.

b.4) Fixation of the pay as per recommendations of “Chaudhary”, “Vora” and “Central” pay commissions and bring his pay scale of Rs. 2000-60-2300-75-3200-100-3500 and adding there in his initial pay a total of 6 advance increments regarding Ph.D. decree (Annexure P/25) and Family Planning Certificate (Annexure P/26), his pay should be revised again under revised pay scale on or after 1.1.96 i.e. 2.5.98 (Annexure P-15)

c) That such further direction to the respondents 1 & 2 may also be issued in the facts and circumstance of the case so as to grant a complete relief to the petitioner and the petition be allowed with costs.

2. Pending the writ petition, the petitioner had also amended the petition claiming for the following additional reliefs:

“That this Hon'ble Court may graciously be pleased further to direct the respondents to declare the petitioner as Technical Officer w.e.f. 02.05.98 instead of 21.01.2002 and hold him entitled to the pre-revised pay scale of 2200-4000 as on 02.05.98 and thereafter hold the petitioner entitled to its revised pay scale of 8000-13500 w.e.f. 02.05.98 against the post of Technical Officer, as per recommendation and implementation of fifth Pay Commission instead of 21.01.2002, so drawn and paid to the petitioner while discriminating with others by a time-bound directions to the respondents.”

3. According to the petitioner, the main relief or the primary grievance of the petitioner is the non-consideration of the petitioner for the post of

Senior Technical Assistant in the School of Studies in Economics (Teaching Department in the University) in the year 1988. The petitioner has also claimed for grant of proforma seniority from 02.06.1988 and monetary benefits on the post of Senior Technical Assistant from 22.07.1993 onwards when the petitioner, for the first time, was appointed by the respondents on daily wage against clear sanctioned vacant post of Senior Technical Assistant.

4. The brief facts relevant for adjudication of the present writ petition are that an advertisement was published by the respondent no.1 University i.e. Pt. Ravishankar Shukla University, Raipur in October, 1987 for filling up of post of Senior Technical Assistant in the School of Studies in Economics under the University Teaching Department. That the petitioner finding himself to be eligible for the said post applied for the same. According to the petitioner, a Selection Committee was constituted, interviews were conducted on 25.05.1988 and the recommendation was also made by the Selection Committee wherein the name of the petitioner stood at serial no.1 in the select list. However, for reasons best known, the select list or the recommendation made by the Selection Committee was not acted upon. Though the petitioner tried hard for the respondents to pass an order of appointment but no fruitful response was received by him. Meanwhile, the petitioner kept on submitting application after application along with his Biodata for an appointment to be made. At a later stage, in the year 1992, the respondent no.3 requested the Registrar of the University for filling up of the post of one Research Assistant and one Senior Technical Assistant lying vacant. He had also recommended for filling up of the said posts among the candidates who had already

subjected to selection for the said posts in past. Based upon which vide order dated 16.07.1993, the petitioner was granted appointment on the post of Technical Assistant for a period of 89 days at the wages of Rs.36 per day. The said engagement of the petitioner for a period of 89 days was further extended periodically till 31.05.1994 when the services of the petitioner ultimately stood discontinued. The discontinuance of service was agitated by the petitioner before the Vice Chancellor. The Vice Chancellor later on vide order dated 27.07.1994 took the petitioner back in service on daily wages strictly as a temporary appointment on ad hoc basis and the petitioner thereafter also continued to work on the said post uninterruptedly or with artificial breaks.

5. The petitioner meanwhile had been approaching the respondent authorities seeking for regularization of his services with the respondents. Subsequently, the petitioner approached the High Court of Madhya Pradesh at Jabalpur seeking for a direction to the respondent University for considering his case for appointment to the post of Senior Technical Assistant since 1993 and also sought for regularization on the said post. The said writ petition got disposed of on 17.03.1998 on the assurance given by the counsel for the University that the case of the petitioner for regularization would be considered and a suitable order would be passed.
6. Pursuant to the order of the High Court dated 17.03.98 in WP No. 1786/96, on 02.05.1998 (Annexure P-15), the respondent authorities passed an order of regularization of service of the petitioner on the post of Senior Technical Assistant in pay scale of 1640-60-2600-75-2900. The said order dated 02.05.98 was without any demure or objection complied with by the petitioner on the same day i.e. on 02.05.98 (Annexure P-16).

7. According to the petitioner, the pay scale of Senior Technical Assistant had been revised periodically by the respondents in the light of the revision of pay that occurred in between. The pay scale of Senior Technical Assistant stood revised at rupees 2000-60-3200-100-3500 whereas the petitioner was given the pay scale of 1640-2900. This again had been represented by the petitioner before the respondents and later on, legal notices were also issued and the petitioner had also sought for regularization of his services w.e.f. 16.07.93 i.e. the date when he was initially appointed by the respondents on daily wages. The further grievance of the petitioner is the non granting of 4 advance increments which the petitioner would be entitled for on account of the petitioner having qualification of Ph.D to his credit which otherwise is paid to all teaching staffs under the respondents. The petitioner also contended of not granting of the advance increment which the petitioner claims on account of his having undergone family planning operation and being a green card holder for the same. All these had led to the filing of the present writ petition.
8. The counsel appearing for the University opposed the petition wherein, initially, the objection of the petition suffering from delay laches has been raised. According to the respondents, having got an order of regularization as early as on 02.05.98 which was immediately accepted by the petitioner, the filing of the present writ petition after more than 6 years thereafter in the year 2004 would show that there is great amount of delay. According to the respondents, the relief sought for by the petitioner for regularization from a back date or regularization of his services from a period during which he was not on the rolls of the respondents as a regular

staff, is totally misconceived and baseless nor can such relief be granted under the service law jurisprudence.

9. According to the respondents, as regards the selection process which was conducted in the year 1987-88, till the respondents have not further pursued with the recruitment process, the petitioner does not have any right to claim for the said recruitment process nor did the petitioner at any point of time have a grievance for non finalization of the said selection process conducted in the year 1987-88. Therefore, the petitioner cannot claim for any right whatsoever on that count. According to the respondents, the petitioner for the first time was engaged by the respondent University vide Annexure P-4 dated 16.07.1993 and not before that. Therefore, any claim prior to 16.07.1993 is not sustainable in the eye of law. Further contention of the respondents counsel was that since the original engagement of the petitioner on 16.07.1993 was on the post of Technical Assistant, the services of the petitioner could have been regularized only on the said post and not on any other post. It was also the contention of the University that the post of Technical Assistant is a Class-III non teaching post, therefore, the petitioner could not have claimed for the benefits attached to a teaching post.

10. That the post of Senior Technical Assistant in teaching cadre is one which is 100% filled up by way of direct recruitment and could not have been done by way of regularization as per the Regulation 1991 applicable upon the University. Similarly, Clause-6 of the said Regulation 1991 clearly envisages that seniority to a post would be only from a date of regular appointment and not from any other period prior to that. The respondents counsel also pressed upon the fact that the period prior to the date of

regularization i.e. 02.05.1998, the status of the petitioner was purely that of a daily wage employee for which the petitioner would not be entitled for any relief and all consequential benefits of regularization would be applicable or entitled for, from the date of regularization alone and not from any earlier period.

11. During the course of hearing, learned counsel for the respondents submitted that pending the petition, the pay scale of the petitioner had been revised on a couple of occasions. Firstly, it was revised to Rs. 2200-4000 which further was revised to Rs. 8000-13,000. All of which has been w.e.f. 02.05.1998 i.e. from the date of regularization.
12. So far as the claim of granting of increment on obtaining Ph.D is concerned, the contention of the counsel for the University is that the petitioner meanwhile has been granted the same vide order dated 31.08.2015.
13. As regards the advance increment on obtaining green card having undergone the family planning operation, the contention of the counsel for the University is that the said claim of the petitioner already stood rejected vide a specific order dated 28.12.1998 and unless the said order is challenged or set aside, the petitioner would not be entitled for any benefit. According to the University, the appointment of the petitioner was never made under the provisions of the University Grants Commission Act, Rules and Regulations nor was the appointment of the petitioner at any point of time made in the teaching post or the teaching cadre. For all these reasons, the respondents prayed for rejection of the writ petition.
14. Having heard the contentions put forth on either side and on perusal of the record, some of the admitted factual matrix of the case and the

dates which are relevant are that:

- An employment notification was issued in the year 1987 for filling up of the post of Senior Technical Assistant in the School of Studies in Economics under the University Teaching Department.
- The petitioner being eligible had participated for the same and he seems to have been found eligible. A recruitment Committee was constituted, however, the recruitment was not finalized and it was left there itself.
- The petitioner did not pursue with the same nor was there any litigation arising out of the said recruitment.
- The petitioner for the first time was appointed under the respondents vide order dated 16.07.1993 (Annexure P-4). The appointment on 16.07.1993 was of temporary nature on the post of Technical Assistant for a fixed period of 89 days.
- This nature of appointment continued for a period up till 31.05.1994 when the services of the petitioner stood discontinued.
- The petitioner again approached the Vice Chancellor of the University making a specific prayer for at least taking back him in service on the post of Technical Assistant. The Vice Chancellor later on again passed an order on 27.07.1994 reengaging the petitioner on daily wages and the petitioner again discharged his duties as a daily wage employee.
- The petitioner thereafter started making representations to the

respondents for considering his case for regularization in service. Despite of repeated representations no response was received by the petitioner which led to the filing of WP No. 1786/96 in the High Court of Madhya Pradesh at Jabalpur.

- The High Court of Madhya Pradesh vide its judgment dated 17.03.98, on the submission made by the counsel for the University that the case of the petitioner would be considered for regularization, disposed of the said writ petition directing the respondents to take a decision within a period of 6 weeks.
- The respondents, immediately thereafter w.e.f. 02.05.1998 regularized the services of the petitioner on the post of Senior Technical Assistant in the pay scale of Rs.1640-60-2600-75-2900. This order was immediately accepted by the petitioner who gave his joining on the same day.

15. Now comes to the question as to what relief would the petitioner be entitled for as against the claims that he has made.

16. From the factual matrix as narrated in the preceding paragraphs what stands established is that the first engagement of the petitioner with the respondents was on 16.07.1993. The said appointment was exclusively temporary in nature for a fixed period and on the post of Technical Assistant. This post was acceptable to the petitioner. This nature of appointment was also acceptable to the petitioner. The petitioner continued to work on the said post up till 31.05.1994 when he was discontinued.

17. From perusal of the documents enclosed along with the writ petition

it shows that the claim of the petitioner thereafter to the Vice Chancellor again was for considering his re-engagement as a Technical Assistant by way of a representation made to the Vice Chancellor. Accepting his request, the Vice Chancellor again reengaged the petitioner as a daily wage worker to discharge the duties of a Technical Assistant from August 1994 onwards. Working on the post of Technical Assistant on daily basis the petitioner had approached the Madhya Pradesh High Court for considering his case for regularization which was disposed of on 17.03.1998 directing the respondents to take a decision within six weeks. The respondents also took a decision regularizing him in service vide order dated 02.05.1998 and the petitioner joined the said regularized post immediately without any demur/objection at that point of time.

18. What needs appreciation at this juncture is that whether the petitioner whose initial appointment as a daily wage worker against a post of Technical Assistant, could have been regularized on any other post? Another issue which needs appreciation is whether the petitioner can claim for any benefits particularly monetary benefits of a period prior to his being regularized in service under the respondents?

19. Technically, under the service law jurisprudence, the petitioner stands born in the department on 02.05.1998 when his services were regularized. It is worth mentioning at this juncture that the High Court vide its order dated 17.03.1998 in WP No. 1786/96 had not directed the petitioner to be regularized from a back date. Even otherwise, the regularization of a person in a department, unless it is not specifically mentioned, it is always prospective. The High Court in exercise of its writ jurisdiction or in exercise of its power of judicial review cannot consider a

claim of a person for regularization from an earlier date or a back date which otherwise is exclusively within the domain of the employer to take and decide and is also well within the power of the employer on the administrative side. The same cannot be subjected to judicial review unless it is proved to be contrary to law or having been issued by an incompetent person or is hit by the provisions of Article 14 of the Constitution of India.

20. It is also noteworthy at this juncture to refer to Annexure P-2 which is Biodata of the petitioner which would reveal that for the period between 1985-86 till the petitioner was appointed by the respondents vide order dated 16.07.1993, the petitioner had been intermittently working with various educational institutions. This would further go against the petitioner, as the petitioner cannot be granted the relief he is seeking for the period when he was in employment elsewhere with different employers at different point of time, working in different capacities.
21. Thus, from the aforesaid facts the relevant factor which dis-entitles the petitioner for the reliefs that he has claimed for is that prior to 16.07.1993, from the documents filed by the petitioner himself, it is established that he had been working with different employers in different capacities at different duration of period.
22. Another factor which dis-entitles the petitioner for the relief that he is seeking for is that subsequent to 16.07.1993 till 02.05.1998, the substantive nature of appointment of the petitioner was that of a daily wage employee. The petitioner has been regularized only at the intervention of the High Court vide its order dated 17.03.1998. The order of the High Court as discussed earlier was not for considering

regularization of the petitioner from a back date. On the contrary, it was for considering the regularization taking into account the services rendered by the petitioner as a daily wage employee.

23. So far as the judgment of the Hon'ble Supreme Court in the case of Secretary, State of Karnataka and Others v. Umadevi (3) and Others reported in (2006) 4 SCC 1 on the subject of regularization is concerned, the said judgment would also not benefit the petitioner, as the said judgment deals with the subject regularization alone. Nowhere does the Hon'ble Supreme Court in its entire judgment has held that where a person is entitled for regularization, the same has to be given from a back date or from the initial date of appointment as a daily wage employee or as a temporary employee.

24. Another fact which needs consideration is that the order Annexure P-15 dated 02.05.1998 i.e. the order of regularization has not been challenged by the petitioner at any point of time. The said order also does not reveal that the petitioner is being regularized in the teaching department of the respondent University.

25. So far as the revision of pay is concerned, counsel for the University has shown documents that the pay scale of the petitioner, pending the writ petition, has been revised and the revision of pay has been made applicable from the date of regularization i.e. from 02.05.1998. The respondents also meanwhile have granted 2 advance increments to the petitioner on his having obtained Ph.D.

26. As regards the claim of increment for family planning operation, the same cannot be accepted for the reason that it already stood rejected by a speaking order dated 28.12.1998 which has never been challenged by the

petitioner and which unless is challenged or set aside, the petitioner cannot be granted any relief on the said count.

27. For all the aforesaid reasons, this Court is of the opinion that no strong case has been made out by the petitioner for grant of any relief as sought for.

28. The writ petition being devoid of merits deserves to be and is accordingly dismissed.

**Sd/-
P. Sam Koshy
Judge**