

**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**WPS No. 2951 of 2022**

**Reserved on : 12.03.2024**

**Delivered on : 31.05.2024**

Dr. Durga Sharan Chandra S/o Shri I. L. Chandra Aged About 51 Years R/o D - 259, Rama Green City Khamtarai, Bilaspur, District Bilaspur Chhattisgarh.

**---- Petitioner**

**Versus**

1. State Of Chhattisgarh Through The Secretary, To The Govt. Of Chhattisgarh Department Of Higher Education Mantralaya Mahanadi Bhawan, Naya Raipur, P.S. Rakhi, Raipur Chhattisgarh.
2. The Governing Body (Constituted Under Statute 28 Of College Code Of Chhattisgarh Vishwavidyalaya Adhinium 1973 Of D.P. Vipra College) Through The Secretary To The Governing Body Office Of Principal, D.P. Vipra College Old High Court Road, Bilaspur Chhattisgarh.
3. The Principal D.P. Vipra College Old High Court Road Bilaspur Chhattisgarh.
4. The Inquiry Officer D.P. Vipra College Old High Court Road Bilaspur Chhattisgarh.

**---- Respondents**

**and**

**WPS No. 2988 of 2022**

Subir Sen S/o Shri R.B. Sen, Aged About 60 Years R/o 17/361, Sarju Bagicha, Azad Nagar Bilaspur, District Bilaspur Chhattisgarh.

**---- Petitioner**

**Versus**

1. State Of Chhattisgarh Through The Secretary To The Govt. Of Chhattisgarh Department Of Higher Education Mantralaya Mahanadi Bhawan, Naya Raipur Ps Rakhi, Raipur Chhattisgarh.
2. The Governing Body (Constituted Under Statute 28 Of College Code Of C.G.,vishwavidyalay Adhinium 1973 Of D.P. Vipra College) Through The Secretary To The Governing Body Office Of Principal, D.P.Vipra College Old Higher Court Road, Bilaspur Chhattisgarh.
3. The Principal D.P. Vipra College Old High Court Road Bilaspur Chhattisgarh.

4. The Inquiry Officer D.P. Vipra College Old High Court Road Bilaspur Chhattisgarh.

**---- Respondents**

---

For Petitioners : Mr. Anurag Dayal Shrivastava, Advocate.  
For State : Ms. Shailja Shukla, Dy. Govt. Advocate.  
For res. No. 2 to 4 : Mr. B.P. Sharma, Mr. M.L. Sakat & Ms. Anuja Sharma, Advocates.

---

**Hon'ble Shri Justice Narendra Kumar Vyas**

**C.A.V. Order**

1. The matters were listed in motion hearing but in view of the judgment passed by the Hon'ble Division Bench in Writ Appeal No. 383 of 2022 in case of Subir Sen Vs. State of Chhattisgarh passed on 02.02.2024, wherein Hon'ble the Division Bench has directed for passing afresh order expeditiously, the matter was taken up for hearing on 12.03.2024 and arguments were heard. The parties were directed to file their synopsis within a week. In pursuance of the direction, the petitioners as well as respondents No. 2 & 3 have submitted their written submission also.
2. Since the identical facts and law are involved in both the writ petitions i.e. W.P. (S) No. 2951 of 2022 and W.P. (S) No. 2988 of 2022, they are heard analogously and are being disposed of by this common order.
3. The petitioners who were working as Assistant Professor with the respondents No. 2 and 3 have challenged the termination order dated 17.02.2022 (Annexure P/1) passed in view of resolution dated 16-02-2022 (Annexure P/9) and also prayed for

quashing of the entire departmental inquiry. The petitioners have also prayed for reinstatement with all consequential benefits.

4. Brief facts as reflected from the records of both the cases are that the respondents No. 2 and 3 is the College run by the society registered under the Societies Act. The college run by the society is an unaided education institution as it is not getting any grant from the State Government or from any commission. The petitioners were appointed as Assistant Professor on 03-10-1987 and were confirmed as per Statute -28 of the College Code framed under C. G. Vishvidyalaya Adhiniyum 1973 on 17-06-2003. On 10-01-2022 the Respondent-3 issued notice to the Petitioners regarding their decision to initiate departmental inquiry against them. Along with information dated 10-01-2022 charge-sheet dated 10-01-2022 was also annexed wherein following charges were levelled against them:-

आरोप क्र. 1 – आपके विरुद्ध महाविद्यालय में कार्यरत कर्मचारी द्वारा प्रथम सूचना रिपोर्ट दर्ज करायी गयी है, जिसमें आपके विरुद्ध भारतीय दण्ड संहिता 354 354(अ) 354(ब) 354(स) 354(द) 509(अ) 509(ब) पंजीबद्ध की गयी है, जो किसी महिला कर्मचारी के विरुद्ध किया गया कृत्य कदाचरण एवं अनैतिकता की श्रेणी में आता है, जिससे महाविद्यालय की छवि एवं अध्ययनरत छात्र – छात्राओं पर विपरीत प्रभाव पड़ता, जो गंभीर अपराध की श्रेणी में आता है।

आरोप क्र. 2 – आपके द्वारा प्रबंधन को असत्य, मिथ्या एवं गुमराह करने वाली जानकारी प्रेषित की गई थी, जो कदाचरण की श्रेणी में आता है।

आरोप क्र. 3 – आपके द्वारा आनाधिकृत रूप से महाविद्यालय के विषय में अनावश्यक जानकारी दूसरे संस्थाओं को प्रेषित किया गया है, जिससे महाविद्यालय की छवि छूमिल होती है, जो कदाचरण की श्रेणी में आता है।

आरोप क्र. 4 – प्राचार्य के पत्र क्र. 769/ सी/ 2018, बिलासपुर दिनांक 31.01.2018 को प्रेषित आरोप पत्र का जवाब नहीं दिया जाना, प्राचार्य के आदेश का उल्लंघन जैसे गंभीर कदाचरण की श्रेणी में आता है।”

5. The petitioners submitted their reply on 12-01-2022 denying the allegations made in the charge sheet mainly contending that the copy of the FIR has not been provided to them on the basis of which charges of misconduct and moral turpitude have been levelled against them. It is also submitted that they may be provided copy of the FIR and the documents as detailed in their reply. The petitioners have also demanded certain documents regarding charges No. 1 to 4. It has been specifically contended that due to non supply of these documents it is difficult for them to defend their case properly which causes prejudice to defend their case. As such, it is necessary that the documents as demanded by them be supplied. They have also demanded appointment of legal representative to defend them in the departmental enquiry as well as list of witnesses to be examined in the enquiry.
6. The record of the case would further demonstrate that the respondents without giving any consideration to the reply submitted by the petitioner, have appointed Enquiry Officer on 15-01-2022. The petitioners have raised objection before the respondents No. 3 the Principal of the College that they have not been supplied the relevant documents and the memo dated 15-01-2022 does not specify who has been appointed as Enquiry Officer and under which provisions Enquiry Officer as well as Departmental Representatives have been appointed. The respondent No. 3 has supplied them documents relating to charges levelled against them on 22-01-2022. The petitioners prayed for time as they require some documents to submit reply

to the charge-sheet vide their letter dated 29-01-2022 and 15-02-2022. But, without complying with the principle of natural justice the respondents directed the petitioners to appear on 16-02-2022 vide Memo dated 11-02-2022 as the Executive Committee has to take decision on the enquiry with regard to the petitioners conducted by the Principal of the College.

7. On the above factual foundation the petitioners have submitted that since the inquiry has been conducted in violation of Principle of Natural Justice Statute 28 of College Code which has statutory force and the same provides for imposing penalty to the teaching staff, provides that procedure regarding imposition of penalty to the Government Servant is to be followed while taking disciplinary action against teaching staff of unaided institution. As such, the Rules of Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 are applicable to them which provide the procedure for conducting the departmental inquiry. This has been violated, as such enquiry is bad-in-law and the termination order dated 17-02-2022 based upon this illegal enquiry deserves to be quashed. It has also been contended that the petitioners were not given any opportunity to cross-examine the witness, no opportunity to produce before the Enquiry Officers the oral or documentary evidence was given, thus, it is in violation of Rule 14 CCA Rules which are applicable in their case also. It has also been contended that the presenting officer has not been appointed, therefore, Enquiry Officer has acted as prosecutor and Judge which is also in violation of the Rules. It has also been

contended that the Respondents No. 2 to 4 could not prove the misconduct still the termination from service has been passed. It has also been contended that merely registration of FIR does not confer any right to the respondents No. 2 to 4 to terminate the service treating the said allegation as moral turpitude is also against the well settled position of law that unless and until the delinquents are convicted for moral turpitude by competent Court their services are not liable to be terminated. On this factual position the petitioners have prayed for quashing of the entire departmental inquiry and resolution dated 16-02-2022 as well as termination order dated 17-02-2022.

8. The respondent No. 1 / the State of Chhattisgarh has filed return mainly contending that since no specific relief is sought against them and a service dispute between petitioners and respondents No. 2 to 4 has been agitated in this writ petitions, nothing is to be replied by them and would pray for dismissal of the writ petition.
9. The respondent No. 3 has filed return mainly raising objection about the maintainability of the writ petitions as the petitioners have alternate efficacious remedy available to them under Rule 32 of the College Code Statute-28. To substantiate these submissions the respondent has referred to the judgment of Hon'ble Supreme Court reported in **2022 (5) SCC 345 {Foenix Arc (P) Ltd. vs. Vishwa Bharti Vidya Mandir}**. On merits it has been contended that the petitioners are involved in the act of assault or criminal force on a woman employee of the college with intent to outrage her modesty. Therefore, Crime No.

505/2017 has been registered by the Police Station, City Kotwali Bilaspur against the petitioners for commission of offence under Section 354(A)(i)(ii)(iv) read with Section 34 of the IPC which is a serious offence and moral turpitude is involved. Thus, punishment is proportionate to the misconduct. To substantiate the submission he has referred to the judgment of Hon'ble Supreme Court reported in 2017 (2) SCC 528 **{Krishna District Cooperative Bank vs. K. Hanumanta Rao}** and would pray for dismissal of the writ petition.

10. The respondents No. 2 and 4 have filed reply mainly contending that the petitioners were involved in the criminal case for committing an offence under Section 354(A), 354(B), 354 (C), 354(D), 509(A) and 509(B) of the IPC. The respondents have also taken specific stand that petitioners have alternate remedy as per the Rule 32 of the College Code Statute-28 as such the writ petitions are not maintainable. It has been further contended that petitioner-Dr. Durga Sharan Chandra becomes a member of the Public Service Commission, as such in view of the Article 319 of the Constitution of India he is prohibited to hold any office on ceasing of the such membership from Public Service Commission. It is also submitted that the petitioners are involved in the commission of offence which is serious in nature, therefore, punishment imposed upon them is proportionate to the misconduct and would pray for dismissal of the writ petitions. The respondents have also annexed the copy of the Criminal Revision, documents relating to the departmental inquiry conducted against the petitioners.

11. This Court vide its order dated 26-04-2023 has directed the respondents No. 2 to 4 to produce the original records of the Departmental Enquiry conducted against the petitioners which has been produced at the time of final argument.
12. The learned counsel for the petitioners would submit that the petitioners' service are governed by the Statute 28 of the College Code which has statutory force having been framed under the C. G. Vishvidyalaya Adhiniyum 1973. To substantiate this submission he has referred to the judgment of the Hon'ble Supreme Court in the matter of "**Prabhakar Ramakrishna Jodh -vs- A.L. Pande & other**": **1965 (2) SCR 713** and would submit that since the respondents have violated the statutory provisions of the Statute 28 which provides procedure for conducting enquiry, thus the enquiry is bad-in-law and has been conducted in violation of Principle of Natural Justice also as such writ petition is maintainable before this Court. It has also been contended that the punishment order has been issued by incompetent person as the appointing authority for the petitioners would be governing body. To substantiate this submission they have referred to Rule 8(1)(d) and 30(1) of the Statute 28 and the judgment of Hon'ble Supreme Court in case of **Union of India vs. V. V. Gopinath {AIR 2014 SC 88}**, **State of U.P. vs. Saroj Kumar Sinha {2010 (2) SCC 772}**, **State of Uttaranchal and Others vs. Kharak Singh {2008 (8) SCC 236}** and judgment of Hon'ble Division Bench of this Court in case of **Gupteshwar Prasad Sinha vs. State of M.P. {M.C.C. No. 36/2005 dated 04-09-2014}**. It has



also been contended that the termination order has been imposed without approval of Executive Council of the University which is also violation of Section 31 (3) of the Statue -28. He would further submit that Hon'ble the Division Bench in W.A. No. 33/2024 & W.A. No. 38/2024 decided on 02.02.2024 has already held that the termination/removal of the petitioners cannot be given effect to unless it is approved by the Executive Council and in case in hand, the decision/removal has never been placed before the Executive Council of the University, as such the proposal of removal cannot be given effect and would pray for quashing of the proposal of termination of service of the petitioners dated 16.02.2022 and prayed for reinstatement with full backwages.

13. Learned counsel for respondents No. 2 to 4 would submit that no relief with regard to termination order dated 17.02.2022 has been claimed, therefore, the same cannot be granted by this Court in view of law laid down by Hon'ble the Supreme Court in case of **Bachhaj Nahar Vs. Nilima Mandal & another** reported in **AIR 2009 SC 1103** and **Visweswara Infrastructure Pvt. Ltd. Vs. Telangana State Industrial Infrastructure Corporation Ltd.** reported in **2023 SCC OnLine TS 2980** and would submit that the misconduct submitted by the petitioner is so grievous as such they cannot be reinstated with the respondent which is an educational institution. He would further submit that the petitioners' case falls within the ambit of Clause 29 of the College Code, which deals with the misconduct and in case of misconduct before termination, approval of the Executive

Council is not necessary and would pray for dismissal of the writ petitions.

14. The record of the case would show that earlier both the writ petitions were dismissed by this Court vide order dated 28.11.2023 on the count that the petitioners have alternate remedy of filing appeal before the appellate authority constituted under the College Code which has binding effect upon the petitioners and the respondents. The petitioners being aggrieved with this order, have preferred appeal which was registered as W.A. No. 33/2024 & W.A. No. 38/2024 and Hon'ble the Division Bench vide order dated 12.02.2024 has set aside the order and passed the following order:-

“24. From perusal of sub-section (3) of Section 31 of the Statute 28, it transpires that the decision of removal / termination of the appellants cannot be given effect to unless it is approved by the Executive Council. In the present case, the impugned order of termination has never been placed before the Executive Council of the University and therefore, in view of the said statutory bar, the proposal of removal can not be given effect to. So far as the provision of appeal as prescribed under Section 32(3) (i) of the Statute 28 is concerned, the language is very clear that appeal would lie to the Tribunal against the order of Governing Body and not the proposal or resolution. The proposal or resolution of the Governing Body can be converted into 'order' only after its approval of the Executive Council of the University. The mandate of Section 31(3) of the Statute 28 is very specific that the proposal/decision of Governing Body shall not be given effect to without its approval by the Executive Council and thus, the decision of the Governing Body would turn into the order only after its approval of the Executive Council. This provision further confirm that the stage of appeal would only come after the decision of the Executive Council over the resolution/proposal of the Governing Body. The employee can not prefer an appeal directly to the Tribunal against the decision of Governing Body

without its approval by the Executive Council since it would be considered as premature appeal.

25. Considering the submissions advanced by the learned counsel for the parties, further considering the provisions contained in Section 31(3) of the Statute 28, material available on record and perusing the findings recorded by the learned Single Judge while dismissing the writ petitions as not maintainable, we are of the considered opinion that the decision of termination / removal of the appellants cannot be given effect to unless it is approved by the Executive Council and in the case in hand, the decision of removal / termination has never been placed before the Executive Council of the University and in view of the statutory bar, the proposal of removal can not be given effect to and the observation made by the learned Single Judge regarding availability of alternative remedy of appeal under Section 32 of the Statute 28 is apparently unjust and arbitrary. The learned Single Judge has failed to appreciate the provisions contained in Section 32 of the Statute 28 in its proper perspective. It ought to have been considered that Section 32 has to be read along with the provisions contained in Section 31(3) of Statute 28 and the stage of appeal would only come after the decision of the Executive Council over the resolution/proposal of the Governing Body. The employee can not prefer an appeal directly to the Tribunal against the decision of the Governing Body without its approval by the Executive Council since it would be considered as premature appeal.

26. For the foregoing reasons, the writ appeals are allowed and the impugned order passed by the learned Single Judge is hereby set aside. The matter is remanded back to the learned Single Judge for fresh consideration. The writ petitions are restored in its original numbers. The learned Single Judge after affording due opportunity of hearing to the parties shall pass the order afresh expeditiously.”

15. On the other hand, learned counsel for respondents No. 2 & 3 opposing the aforesaid submission would submit that the petitioners have not challenged the order dated 17.02.2022, as such, the writ petition is not maintainable and would pray for dismissal of the writ petitions.
16. I have heard learned counsel for the parties, considered the rival submissions made by them and also perused the records

of the enquiry proceedings which have been produced by respondents No. 2 & 3.

17. From the above stated factual and legal submissions, following point required to be determined by this Court are :-

“If the termination order dated 16.02.2022 is not given effect as held by Hon’ble the Division Bench, particularly in paragraph 25 of the judgment, what reliefs the petitioners are entitled to get.”

18. Learned counsel for the petitioners would submit that Hon’ble the Division Bench of this Court in paragraph 20 of the judgment has held that termination/removal of the petitioners cannot be given effect to unless it is approved by the Executive Council and in the present case, it has not been approved by the Executive Council of the University, as such it is presumed that the petitioners are in service and they are entitled to be get all the benefits attached with the service.

19. Since Hon’ble the Division Bench has already held that the termination from service of the petitioners cannot be given effect unless it is approved by the Executive Council of the University. Admittedly in the present case, no such approval of the Executive Council is placed on record, thus, it is held that the termination from service of the petitioners cannot be given effect. It means they are in service during this period as their order of termination dated 17.06.2022 is not given effect, therefore, the petitioners are deemed to be in service. The petitioners have nowhere stated in their writ petitions that on account of their illegal termination dated 17.02.2022 (though it has not been given effect), they remained unemployed or

despite attempt made by them to get alternate employment but they could not get any employment to claim backwages for this period as burden lies upon them to prove the same. Thus, the petitioners are directed to join duty forthwith but they are not entitled to get wages for this period in view of 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 activated 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.”

20. Accordingly, the writ petitions are allowed in part. The respondents No. 2 & 3 are directed to allow the petitioners to join their duties as Assistant Professors with continuity of service but without back-wages, reserving liberty to the respondents to proceed further in accordance with law, if they so desired.
21. It is made clear that this Court has not examined whether the enquiry is proper or not or the petitioners have been given proper opportunity of hearing or not to defend themselves or

whether the petitioners have committed any misconduct or not.

All these questions are kept open and it will be considered and decided if exigency so arises.

22. Accordingly, the writ petitions are allowed in part by directing that respondents No. 2 & 3 to allow the petitioners to join duty within one month from the date of receipt of copy of this order but the petitioners will not be entitled to get any back wages for the period from 17.06.2022 till petitioners are reinstated within stipulated time period of one month as granted by this Court.

**Sd/-**  
**(Narendra Kumar Vyas)**  
**Judge**

Arun