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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No.74 of 2021**

State of Chhattisgarh, through its Secretary, Department of School Education, Mahanadi Bhawan, Mantralaya, Naya Raipur Chhattisgarh

----Appellant**Versus**

Pawan Kumar Chandrakar S/o Jarhu Ram Chandrakar, Aged about 62 years, Working as Lecturer at Govt. Mahatma Gandhi Higher Secondary School, Rewa (Lakhouli), Block – Arang, District – Raipur (CG) R/o Village – Borid, P.O. Sasani, P.S. Arang, Distt.Raipur, Chhattisgarh

---- Respondent

For Appellant
For Respondent

: Mr.H.S.Ahluwalia, Deputy Advocate General
: Mr.Rakesh Kumar Kesharwani, Advocate

Hon'ble Shri Ramesh Sinha, Chief Justice**Hon'ble Shri Sanjay K. Agrawal, Judge****Judgment on Board**
(04.04.2023)**Sanjay K. Agrawal, J.**

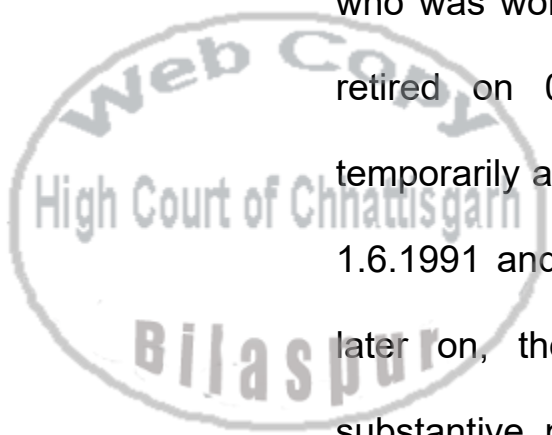
1. State of Chhattisgarh / writ appellant takes exception to the impugned order dated 18.05.2020 (Annexure A-1) passed by the learned Single Judge in WPS No.15 of 2014, by which the learned Single Judge has allowed the writ petition filed by the writ petitioner / respondent herein directing the appellant-State to implement the recommendation of the Screening Committee and to absorb the writ petitioner / respondent to the post of Principal w.e.f. 15.12.1998 and also to grant him all consequential benefits of that



post.

2. The aforesaid challenge has been made on the following factual backdrop:-

2.1 The writ petitioner / respondent was appointed on the post of Lecturer in an unaided school named as Mahatma Gandhi Higher Secondary School, Rewa (Lakhouli), District Raipur (hereinafter called as 'School') on 27.6.1986 and at that relevant point of time, he was holding the degree of post-graduation in second division and later on, he passed his B.Ed. in 1988. Since one P.L. Khurre, who was working on the post of Principal in the aforesaid school, retired on 01.06.1991, the writ petitioner / respondent was temporarily assigned the charge of post of Incharge Principal w.e.f. 1.6.1991 and he was discharging his duties holding the post and later on, the writ petitioner / respondent was appointed on substantive post of Principal in the said school w.e.f. 1.6.1994. Thereafter, the appellant / State came up with absorption policy on 26.06.1995 and for absorption on the post of Head Masters Principal of High/Higher Secondary School, the person concerned should possess post graduate degree with at least II class with B.Ed. and should have worked on the same post for minimum period of 7 years in the named institution and should have 10 years teaching experience in the recognised institutions of Madhya Pradesh. Later on, the said school was taken over by the State w.e.f. 15.12.1998 and the writ petitioner / respondent was absorbed





on the post of Shiksha Karmi-I w.e.f. 10.01.2000.

2.2 Thereafter, the writ petitioner / respondent preferred writ petition being WPS No.3623 of 2010 challenging his absorption order, which was disposed of by this Court with a direction to constitute a Screening Committee and to consider the case of the writ petitioner / respondent in light of the absorption policy dated 26.06.1995. Ultimately, the Screening Committee submitted its recommendation and accepting the recommendation of the Screening Committee, fresh absorption order was passed and the writ petitioner / respondent was absorbed on the post of Lecturer with all consequential benefits w.e.f. 15.12.1998 by order dated 24.09.2013, which the writ petitioner / respondent accepted without demur and without protest and acted upon it, as such, the order dated 24.09.2013 has attained finality.

2.3 WPS No.3430 of 2005 filed by the writ petitioner / respondent before the State Administrative Tribunal was decided by this Court on 13.9.2013, directing the writ petitioner / respondent to move appropriate representation for absorption on the post of Principal and ultimately, on 01.10.2013 the writ petitioner / respondent made a representation. The Screening Committee considered the issue and recommended in favour of the writ petitioner / respondent holding that the writ petitioner/ respondent be absorbed on the post of Principal w.e.f. 15.12.1998. The appellant / State rejected the representation of the writ petitioner / respondent by order dated



12.12.2013 and did not accept the recommendation of the Screening Committee, which was sought to be challenged in writ petition before the writ Court.

3. Learned Single Judge by its impugned order granted the writ petition holding that the writ petitioner / respondent having rendered the service of Principal for more than 7 years inclusive of post as an ad-hoc Principal and had discharged the administrative duties, his case was considered to be recommended for absorption to the post of Principal, which the Screening Committee has rightly recommended, but the State Government arbitrarily refused to accept it and on that ground, the writ petition was allowed.

4. Mr.H.S.Ahluwalia, learned Deputy Advocate General for the appellant /State, would submit that the writ petitioner / respondent was absorbed on the post of Lecturer with all consequential benefits w.e.f. 15.12.1998 by order dated 24.09.2013 and he accepted the same without demur or protest and that order has attained finality in absence of challenge to the order dated 24.09.2013 absorbing the respondent herein on the post of Lecturer. Even otherwise, in light of the judgment of the Supreme Court in the matter of **Ramakant Shripad Sinai Advalpalkar v. Union of India and others**¹, the impugned order deserves to be set aside.

5. On the other hand, Mr.Rajesh Kumar Kesharwani, learned counsel for the writ petitioner / respondent, would submit that the order

1 1991 Supp (2) SCC 733



passed by the learned Single Judge is strictly in accordance with law as the writ petitioner / respondent has worked on the post of Incharge Principal from 1.6.1991 to 1.6.1994, though he has worked as Incharge Principal, yet his period from 1.6.1991 to 1.6.1994 will be counted for working as 7 years on the post of Principal as required by absorption policy. Therefore, in light of the judgment of the Supreme Court in the matter of State of **Madhya Pradesh and Another v. Laxmishankar Mishra**², writ appeal deserves to be dismissed.

6. We have heard learned counsel for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.

7. The writ petitioner / respondent was appointed on substantive post of Lecturer w.e.f. 27.06.1986 in an unaided School and the said School was taken over by the State w.e.f. 15.12.1998 and the case of writ petitioner / respondent was considered for absorption as per absorption policy dated 26.06.1995 and he was absorbed on the post of Shiksha Karmi-I on 10.01.2000 and in writ petition filed by the writ petitioner / respondent herein, he was directed to be absorbed in light of absorption policy dated 26.06.1995 w.e.f. 15.12.1998 on the post of Lecturer by order dated 24.09.2013, which the writ petitioner / respondent accepted without demur and without protest and did not challenge this order. As such, the order dated 24.09.2013 has attained finality. Therefore, the writ petitioner

2 (1979) 2 SCC 270



having accepted the order of absorption dated 24.09.2013 on the post of Lecturer and having acted upon it and even the order dated 24.09.2013 was not challenged by him in any substantive proceeding, the writ petitioner / respondent is bound by order dated 24.09.2013 by which he has been absorbed on the post of Lecturer w.e.f.15.12.1998 as he has already acted upon it.

8. Thus, we are of the considered opinion that though the writ petitioner / respondent was absorbed on the post of Lecturer by order dated 24.09.2013 w.e.f. 15.12.1998 which he has even not challenged till this date and which has become final and in absence of challenge to the order dated 24.09.2013 absorbing the writ petitioner on the post of Lecturer, the writ petitioner / respondent is bound by order dated 24.09.2013. Since the order dated 24.09.2013 is already in existence, the writ petitioner / respondent was not entitled to be again considered for absorption on the post of Principal w.e.f. 15.12.1998.

9. In view of above-stated factual position, the argument of learned counsel for the respondent that he has completed 7 years on the post of Principal and claiming absorption need not be gone into and consequently, the principles of law laid down in **Laxmishankar Mishra** (supra) would not be applicable.

10. Accordingly, the impugned order dated 18.05.2020 (Annexure A-1) passed by the learned Single Judge in WPS No.15 of 2014 deserves to be and is hereby set aside and writ petition filed by the



writ petitioner / respondent herein stands dismissed leaving the parties to bear their own cost(s).

11. The writ appeal is allowed to the extent indicated hereinabove.

Sd/-

(Sanjay K. Agrawal)
Judge

Sd/-

(Ramesh Sinha)
Chief Justice

Bablu

