

(2023) 01 CHH CK 0077
In the Chhattisgarh High Court
Case No : Writ Appeal No. 31 Of 2023

Guru Ghasidas Vishwa Vidyalaya

APPELLANT

Vs

Dr. Krishna Kumar Sharma

RESPONDENT

Date of Decision : 24-01-2023

Acts Referred:

Citation : (2023) 01 CHH CK 0077

Hon'ble Judges : Arup Kumar Goswami, CJ; Rakesh Mohan Pandey, J

Bench : Division Bench

Advocate : Ashish Shrivastava, Aman Pandey, Prateek Sharma, Astha Shukla

Final Decision : Disposed Of

Judgement

1. Heard Mr. Ashish Shrivastava, learned senior counsel, assisted by Mr. Aman Pandey, learned counsel for the appellants. Also heard Mr. Prateek Sharma, learned counsel, appearing for respondent No. 1 / writ petitioner and Ms. Astha Shukla, learned counsel, appearing for respondent No.2.
2. This appeal is presented against an order dated 09.12.2022 passed by the learned Single Judge in WPS No. 6992 of 2008.
3. The writ petition was filed assailing the order of appointment of present respondents No. 2 and 3 in the writ appeal (respondents No. 4 and 5 in the writ petition) and also praying for a writ of mandamus directing the appellants herein to consider the case of the writ petitioner for appointment to the post of Lecture.
4. The learned Single Judge recorded a finding that in any view of the matter, the respondent No. 3 herein (respondent No. 5 in the writ petition) had scored higher marks than the writ petitioner and therefore, there appears to be no controversy with regard to his appointment.
5. After considering the materials on record, it was held by the learned Single Judge that the respondent No. 2 herein (respondent No. 4 in the writ petition) was awarded marks on extraneous consideration and accordingly, observed as

follows:

"24. For the given reasons, the appointment of Respondent No.4 cannot be sustained in the eyes of law. The appointment of Respondent No.4 was on extraneous considerations by awarding marks which she was otherwise not deserving and entitled for. Her order of appointment (Annexure P-1, dated 24.7.2007) therefore requires to be and is accordingly set aside/quashed.

25. Upon the quashment of the order of appointment of Respondent No.4, it would be the Petitioner who would be the second meritorious candidate after Respondent No.5, who would be entitled to be appointed against the post of Lecturer. The Respondent University is directed to consider the appointment of the Petitioner against the appointment of Respondent No.4. The Petitioner would also be entitled for notional seniority from the date the Respondent No.4 was appointed. However, the actual benefits shall be extended only from the date the Petitioner joins the service. The Petitioner would also be entitled for all other consequential benefits, except for the actual payment for the intervening period where the Petitioner would be entitled only for the notional benefits and notional fixation. In the event when the Petitioner is not inclined to accept the appointment, the Respondents can consider retaining the services of Respondent No.4."

6. Mr. Shrivastava has submitted that during the intervening period of reserving of the case for judgment and delivery of judgment, an important development had taken place, in that, pursuant to a recruitment process, the writ petitioner came to be appointed as an Associate Professor in the appellant University and he had also joined.

7. Mr. Sharma does not dispute the above submission and rather contends that the writ petitioner had submitted a letter dated 27.12.2022 to the Registrar stating that he does not intend to join in the post of Lecturer.

8. A careful perusal of directions and observations of the learned Single Judge in paragraphs 24 and 25 would go to show that although the appointment of the present respondent No.2 (respondent No. 4 in the writ petition) was set aside, liberty was also granted to the appellants to consider retaining her in service in case, the petitioner did not intend to join the post of Lecturer.

9. Since the writ petitioner had joined in the post of Associate Professor, which is higher than the post of Lecturer and since it is submitted that he is not inclined to accept and join in the post of Lecturer, we are of the opinion that no interference is called for with the appointment of present respondent No.2 (respondent No.4 in the writ petition).

10. Accordingly, the writ appeal is disposed of with the above modification in the order of the learned Single Judge.

11. We had decided to dispose of the appeal in terms of the above without notice to respondent No. 3 of this appeal as he is in no way going to be prejudiced by

this order.