

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE SANJAY DWIVEDI

ON THE 09th OF MAY, 2025

WRIT PETITION NO. 13847 OF 2023

SANTOSH BHALAVE

Versus

STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION NO. 14864 OF 2023

BASANT RAM MARAVI

Versus

STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION NO. 14867 OF 2023

YOGESH CHILE

Versus

STATE OF MADHYA PRADESH AND OTHERS

&

WRIT PETITION NO. 14870 OF 2023

SMT. DEEPTI HANWAT

Versus

STATE OF MADHYA PRADESH AND OTHERS

Appearance :

Shri Praveen Verma – Advocate for the petitioners.

Shri Girish Kekre – Government Advocate for the respondents-State.

Reserved on : 05/05/2025

Pronounced on : 09/05/2025

ORDER

I.A. No.15130/2024, I.A. No.15113/2024, I.A. No.15119/2024 and I.A. No.15132/2024 have been filed by the respondents-State in W.P. Nos.13847/2023, 14864/2023, 14867/2023 and 14870/2023 respectively requesting therein that All India Council for Technical Education (AICTE) may be made party.

2. Looking to the relief claimed by the petitioners, the issue involved in these cases are as to whether the benefit already granted under the AICTE regulation by the respondent/State authority can be withdrawn pursuant to the subsequent regulation of AICTE or not.

3. In these cases no relief has been claimed against the AICTE and relief has been sought only against the authority which has passed the order withdrawing the relief already granted pursuant to the regulation of AICTE, therefore, I find that AICTE is neither the necessary nor proper party, accordingly, I.A. No.15130/2024, I.A. No.15113/2024, I.A. No.15119/2024 and I.A. No.15132/2024 are rejected.

4. By the instant petitions, learned counsel for the petitioners is assailing the order dated 11.09.2017 (Annexure P/10) whereby the respondent No.5-Principal has withdrawn the benefits granted to the petitioners vide order dated 01.07.2017 whereby they have been granted the benefit of A.G.P. after completion of six years of service and as such, they became entitled to get Rs.6,000/- as AGP and pay fixation was made accordingly. The petitioners, in these petitions, have also assailed orders

dated 16.08.2022 (Annexure P/12) and 21.04.2023 (Annexure P/14) passed by the respondents.

5. Shri Praveen Verma, learned counsel for the petitioners submits that the said benefit has been granted to them pursuant to the All India Council for Technical Education (hereinafter referred to as 'AICTE') Regulation dated 05.03.2010 (Annexure P/4) and its respective clause i.e. clause-(v) which reads as under :-

“(v) ऐसा व्याख्याता, जिसके पास किसी कार्यक्रम की प्रासंगिक शाखा/विषय-क्षेत्र में पीएच.डी. अथवा निष्णात डिग्री नहीं है, व्याख्याता के रूप में 6 वर्ष की सेवा पूरी करने के उपरांत ही 6000 रु0 के एजीपी के लिए पात्र होगा।”

6. He has also submitted that the benefit which had been granted to the petitioners was withdrawn pursuant to the subsequent notification dated 04.01.2016 which has been filed by the respondents along with their reply as Annexure R/1. Shri Verma, learned counsel further submits that this notification came into force w.e.f. 04.01.20216 and it contains clause 3.5 which reads as under :-

“Incumbent and newly recruited Lecturer with B.E./B.Tech qualification in appropriate branch/discipline either entering the teaching profession newly or Lecturers already in service in Polytechnic Institutions shall be designated as Lecturer and shall be placed in the Pay Band of Rs. 15600-39100 with AGP of Rs.5400 and will move to AGP of Rs.6000 on completion of Master's qualification in appropriate branch/discipline. Further, Incumbent and newly recruited Lecturer who do not have Ph.D. or a Master's degree in the relevant branch/discipline of a

program shall be eligible for the AGP of Rs.7,000 (stage-2) as Lecturer (Senior Scale) only after completion of 9 years service as Lecturer.”

7. He submits that this clarification in earlier notification dated 05.03.2010 cannot be made effective retrospectively but it should be made effective prospectively and as such, the right accrued in favour of petitioners pursuant to the earlier notification dated 05.03.2010, cannot be taken away by way of subsequent clarification dated 04.01.2016 and accordingly, he submits that the impugned orders dated 11.09.2017 (Annexure P/10), 16.08.2022 (Annexure P/12) and 21.04.2023 (Annexure P/14) are illegal and the same deserve to be set aside.

8. *Per Contra* Shri Kekre, learned Government Advocate appearing for the respondents-State relying upon the stand taken by the respondents has submitted that the clarification dated 04.01.2016 though applicable prospectively but it is applicable for the petitioners for the reason that the petitioners have completed 06 years of service only after enforcement of the clarification dated 04.01.2016. He submits that date of accruing right in favour of petitioners is not a material date but the date on which right matured is a material date and the date of maturity falls within the ambit of regulation dated 04.01.2016 and therefore, there is nothing wrong committed by the authorities because on the date of maturity of right accrued in favour of the petitioners, 09 years of service was required on the post of Lecturer if petitioners do not possess Ph.D. or Post Graduation Degree. It is also pointed out by Shri Kekre, as per the conditions contain in clause-3.5 of the notification dated 04.01.2016, the petitioners would get Rs.7,000/- instead of Rs.6000/- but that would be only after completion of 09 years of service on the post of Lecturer. Shri Kekre has

also pointed out that after enforcement of notification of 2016, the Committee has also considered as to what type of benefit can be granted to the petitioners and after considering that aspect, the Committee has also decided vide order dated 16.08.2022 (Annexure P/12) and 21.04.2023 (Annexure P/14) that the benefits of AGP will be granted to the petitioners only pursuant to the notification dated 04.01.2016 and as such, they will be required to fulfill the conditions contained in clause-3.5 of the notification dated 04.01.2016. The Commissioner, Technical Education has also considered this aspect and made a communication dated 21.04.2023 (Annexure P/14) to the respondent No.5 reiterating the same analogy which has been considered by the Committee and opinion given by them vide letter dated 16.08.2022 (Annexure P/12). However, the petitioners have also assailed these opinion and communication dated 16.08.2022 and 21.04.2023.

9. Considering the submissions made by learned counsel for the parties and perusal of record, the question which emerged to be adjudicated is whether the date of accrual of right in favour of an employee is material or date of maturity of right is material. If it is found that date of accrual of right in favour of an employee is material then the stand of the petitioners will prevail and if it is found otherwise then the stand of the respondents will prevail. In such circumstances, this Court is of the opinion that as per the available facts and on the basis of submissions and documents available on record, the notification dated 04.01.2016 which contains clause-3.5 would have prospective effect as per the view taken by this High Court in *W.P. No.20653/2016 (Dr. D.R.*

Dubey and others vs. The State of Madhya Pradesh and others) and in respect of the said notification, the Court has observed as under :-

“11. In the considered view of this Court, the issue is no more res integra, after decision of the High Court of Delhi in **Dr. Shiv Ratan Singh & anr. (supra)** upon issuance of the notification dated 20-5-2020 by the AICTE contained in Annexure-A/1 with I.A. No.1306/2022 filed in W.P. No.20653/2016. The AICTE in unequivocal terms has clarified that the notification dated 4-01-2016 has no retrospective effect, and the same shall have no bearing to the cases where employees have obtained their Ph.D. degrees prior to cut off date. Accordingly, the Delhi High Court while taking note of the notification dated 20-5-2020 has already held that the same has no retrospective effect.”

10. The Delhi High Court in *W.P. (C) No.702/2020 CM APPL. 24017/2020 and 9845/2021 (Dr. Shiv Ratan Singh and another vs. Govt. of NCT of Delhi and others)* considering the undertaking and admission of learned counsel for AICTE, observed as under :-

“It is pertinent to note that Mr. Dubey does not dispute the fact that the notification dated 04.01.2016, operates prospectively.”

11. Even the Supreme Court in the case of **Gelus Ram Sahu and others vs. Dr. Surendra Kumar Singh and others** reported in (2020) 4 SCC 484 has considered the notification of 2010 and notification of 2016 and observed that in its terms, notification of 2016 cannot be made effective retrospectively and that would not affect the appointments already made prior to notification of 2016. However, Supreme Court has considered the condition relating to appointments to the post as prescribed

in notification of 2016 but at the same time, it is observed that appointments already made in view of notification of 2010 would not be affected and as such observed that it is prospective in nature. Thus, there is no ambiguity with regard to application of the notification dated 04.01.2016 as it has no retrospective effect.

12. Thus, the question is whether the benefit accrued in favour of petitioners for grant of AGP provided vide notification dated 05.03.2010 and vide order dated 01.07.2017 on their completion of 06 years of service on the post of Lecturer can be cancelled only because the said benefit got matured in the year 2016 after implementation of notification dated 04.01.2016 and therefore, the condition by way of clarificatory notification inserted, would be applicable to the petitioners or not.

13. In view of the submissions made by learned counsel for the parties and on perusal of record, in my opinion as per the settled principle of law, right already accrued in favour of the petitioners cannot be taken away by way of subsequent amendment or clarification which has no retrospective effect. In the present case, right accrued in favour of petitioners by way of notification dated 05.03.2010 and benefits were already granted to them vide order dated 01.07.2017, therefore, the same cannot be taken away vide order dated 11.09.2017 (Annexure P/10). The subsequent orders passed by the authorities approving the order dated 11.09.2017 is also not proper.

14. The Supreme Court in the case of **Punjab State Cooperative Agricultural Development Bank Limited vs. Registrar, Cooperative Societies and others (2022) 4 SCC 363** has considered the legal position as to whether the benefit already accrued in favour of an employee can be

withdrawn by subsequent amendment. In this case, supreme Court was dealing with the pension scheme and finally observed as under :-

“49. The exposition of the legal principles culled out is that an amendment having retrospective operation which has the effect of taking away the benefit already available to the employee under the existing rule indeed would divest the employee from his vested or accrued rights and that being so, it would be held to be violative of the rights guaranteed under Articles 14 and 16 of the Constitution.

50. In the instant case, the bank pension scheme was introduced from 1-4-1989 and options were called from the employees and those who had given their option became member of the pension scheme and accordingly pension was continuously paid to them without fail and only in the year 2010, when the Bank failed in discharging its obligations, the respondent employees approached the High Court by filing the writ petitions. The Bank later on withdrew the scheme of pension by deleting Rule 15(ii) by an amendment dated 11-3-2014 which was introduced with effect from 1-4-1989 and the employees who availed the benefit of pension under the scheme, indeed their rights stood vested and accrued to them and any amendment to the contrary, which has been made with retrospective operation to take away the right accrued to the retired employee under the existing rule certainly is not only violative of Article 14 but also of Article 21 of the Constitution.”

15. In view of the aforesaid factual aspect and law laid down by the Supreme Court, the pension scheme was very much available at the time of appointment in service and benefit was also granted but that benefit was stopped by the Bank and then petition was preferred before the Court

in which Bank has taken a stand that benefit of pension has been withdrawn by the Bank by deleting Rule 15(ii) by way of amendment dated 11.03.2014 and the benefit which were available as per the scheme dated 01.04.1989 has been withdrawn. That conduct of the respondent and their action was not accepted by the Supreme Court and therefore, observed that right accrued to the employee cannot be taken away otherwise, it would be violative of Article 14 and Article 21 of the Constitution.

16. I am also of the opinion when benefit was available to the petitioners when they were in service and that has been granted to them by the order dated 01.07.2017 then only because a clarificatory notification came on 04.01.2016 having prospective operation, the right already accrued in favour of the petitioners cannot be taken away, therefore, the impugned orders dated 11.09.2017 (Annexure P/10), 16.08.2022 (Annexure P/12) and 21.04.2023 (Annexure P/14) being contrary to law and are not sustainable in view of the existing legal position and therefore, the orders are hereby set aside making it clear that notification dated 04.01.2016 would be prospective and would be applicable to the employees appointed on the date of notification or thereafter but it would not cause any adverse impact or take away the right already accrued in favour of the petitioners.

17. Accordingly, the petitions are **allowed** directing respondents to grant benefit of the order dated 01.07.2017 to the petitioners and accordingly, arrears be also paid to them within a period of three months from the date of order passed by this Court with interest @ 8% over the amount of arrears.

18. No order as to costs.

(SANJAY DWIVEDI)
JUDGE

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