# IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

**BEFORE**

**HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA**

**ON THE 28th OF NOVEMBER, 2023**

**WRIT PETITION No. 16360 of 2022**

**BETWEEN:-**

**UMESH KUMAR SHRIVASTAVA S/O SHRI JAGATMOHAN SHRIVASTAVA, AGED ABOUT 60 YEARS, OCCUPATION: SUB ENGINEER (WORK CHARGE) IN JAWAHAR LAL NEHRU KRISHI VISHWAVIDYALAYA JABALPUR ADHARTAL JABALPUR (MADHYA PRADESH)**

**.....PETITIONER**

***(BY SHRI SAMDARSHI TIWARI - ADVOCATE )***

**AND**

1. **JAWAHARLAL NEHRU KRISHI VISHWAVIDYALAYA THROUGH ITS REGISTRAR KRISHI NAGAR ADHARTAL JABALPUR (MADHYA PRADESH)**
2. **THE VICE CHANCELLOR, JAWAHARLAL NEHRU KRISHI VISHWAVIDYALAYA KRISHI NAGAR ADHARTAL JABALPUR (MADHYA PRADESH)**
3. **THE EXECUTIVE ENGINEER, JAWAHARLAL NEHRU KRISHI VISHWAVIDYALAYA KRISHI NAGAR ADHARTAL JABALPUR (MADHYA PRADESH)**

**.....RESPONDENTS**

***(BY MS. AISHWARYA SINGH - ADVOCATE )***

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*This petition coming on for admission this day, the court passed the following:*

**ORDER**

1. This petition under Article 226 of the Constitution of India has been filed seeking the following reliefs :-

   (i) Quash the condition no. 3 placed in the order dated 21.4.2022, Annexure-P/15, in its entirety.

   (ii) Hold that on his reinstatement in service pursuant to the order dated 21.4.2022, Annexure-P/15, the petitioner is entitled for all the monetary benefits, like arrears of salary and other allowances for the period he was forcefully retired from service till the date of his reinstatement.

   (iii) Direct the respondent University to fix his pension and other retiral dues on petitioner's retirement, if so permissible in law, treating him to be in continuous service till attaining the age of 62 years, as if he was not retired earlier on attaining the age of 60 years.

   (iv) Consider grant of any other relief or direction which this Court may deem proper and appropriate under the fact and circumstances of the case.

2. It is the case of the petitioner that respondent no. 1 University is a body constituted under Jawaharlal Nehru Krishi Vishwavidyalaya Act, 1973 and is competent to create administrative, ministerial and other necessary posts and to make appointments thereto. The "Board" has been constituted under Section 25 of the Act, which is empowered to approve and sanction the budget of the University and to exercise other powers and the duties to carry out the purpose of the Act and

administration. The petitioner was initially appointed under the fold of respondent no. 3 as Sub Engineer in the work charged establishment by order dated 29.12.1984. The appointment of the petitioner was against vacant post and a pay scale and job was permanent in nature. Such status was confirmed by an express administrative order dated 4.9.2001 followed by an order dated 20.12.2002 passed by the University.

3. It is the case of the petitioner that the respondent University has maintained almost all the service conditions at par with the regular employees and maintained the seniority list of Sub Engineer, Sub Overseer and Time Keepers giving referred to J.N.K.V.V. Services (General Conditions of Service) Regulations, 1969. It is the case of the petitioner that the State Government through its Finance Department by circulars dated 12.5.1980, 11.12.1980 and 20.1.2000 clarified that the age of the superannuation of work charged employees shall also be extended from 60 to 62 years applying the provisions of FR-56. The Managing Board of the University in its 222nd meeting convened on 20.6.2018, approved the proposal of extending the age of superannuation from 60 to 62 years for all the work charged and contingency paid employees (employees in time scale and time keepers, sub engineers under work charged head), with a rider to obtain sanction from the State Government. A letter dated 27.6.2018 was sent to the State Government mentioning that there is no financial implication if the age of superannuation of 125 time scale labourers and 9 work charged

employees is enhanced upto 62 years. Although the University is itself competent to take a decision where financial implication is not necessary, still sanction from the State Government was sought. However, the State Government by adopting a casual approach disapproved the proposal of the University, by taking a stand to the effect that the provisions of FR-56 are not applicable to the employees working the work charged / contingency establishments. Accordingly, by letter dated 7.9.2019 the petitioner was intimated that he shall stand retired from service w.e.f. 31.7.2020 after attaining the age of 60 years. On 23.1.2020 respondent no. 3 had made a clear recommendation to respondent no. 1 that all the service conditions as per the service rules prevailing in the State Government can be applied in respect of 6 employees ( including petitioner) working in the work charged establishment and there would be no financial implication if such recommendation is accepted.

4. It is further case of the petitioner that in respect of the decision taken by the State Government in relation to the respective proposal sent by Raj Mata Vijaya Raje Scindia Agricultural University, Gwalior and J.N.K.V.V. was assailed before the Gwalior Bench of this Court by one employee by filing W.P.No.20039/2020 **(Jagdish Singh Vs. State of M.P. and others)**. The petition was allowed by order dated 26.6.2021 and the order of the State Government dated 30.8.2018 was quashed entirely in view of law laid down by the Full Bench of this Court in the case of **Vishnu Mutia & others Vs. State of M.P. &**

**others, reported in 2006 (1) MPLJ 23**. The petitioner had earlier assailed the order dated 7.9.2019 by filing a Writ Petition No.8314/2020. The said writ petition was opposed by the University by relying upon the order dated 30.8.2018 passed by the State Government, knowing fully well that the said order is no more in existence having been quashed in the case of **Jagdish Singh (supra).**

5. It is the case of the petitioner that all the other petitions involving the similar challenge were clubbed and was taken up for hearing by this Court on 21.4.2022. The matter was heard and closed for orders on 21.4.2022. It is submitted that the University played a mischief by passing an order dated 21.4.2022 itself, thereby enhancing the age of superannuation of work charged employees upto the age of 62 years and placed the said order before the Court in absence of learned counsel for the petitioners. It is submitted that condition no. 3 of the order dated 21.4.2022 was arbitrary and unjustified thereby putting the employees like the petitioner, into monetary loss for no fault on their part. Accordingly, the petition was dismissed having been rendered infructuous vide order dated 21.4.2022 itself. It is the case of the petitioner that the petitioner was deprived of addressing this Court on the adverse condition placed in the impugned order dated 21.4.2022. Accordingly, the petitioner filed a review petition bearing registration No. R.P.591/2022 which was disposed of with liberty to the petitioner to assail the part of the

order dated 21.4.2022 which is contrary to the interest of the petitioner.

6. It is submitted that in the light of the order dated 21.4.2022, the petitioner joined his service once again on 25.4.2022 and now, the petitioner became due to be retired on attaining the age of 62 years on 31.7.2022. However, only grievance of the petitioner is that by virtue of condition no. 3 as imposed in the order dated 21.4.2022, he has been denied the monetary benefits from the date he was forcefully retired till the date of his joining by applying the principle of 'no work no pay'.

7. It is submitted that the decision of the reinstatement in the event of rescinding the premature retirement of the petitioner was taken in pursuance to the decision of the Board in a subsequent meeting i.e. 230$^{th}$ meeting, convened on 22.12.2021. The agenda no. 11 was with regard to enhancement of age of superannuation but it did not contain any proposal of barring the monetary benefits in the event of enhancing the age of superannuation of the work charged contingency paid employees. Thus, it is claimed that respondent no. 2 has incorporated the impugned condition no. 3 contrary to the decision of the Board taken in its 230$^{th}$ meeting. Further, the doctrine of No work No pay cannot be applied as petitioner was not allowed to work.

8. Per contra, the petition is vehemently opposed by counsel for the respondents. It is the claim of the respondents that appointment of the petitioner was not against vacant and sanctioned post but it was on temporary basis for a specified time. The petitioner was

paid salary from the contingency fund as there is no regular post for the work charged employee in the University. The University schedule does not provide for regular post for the work charged employees at the level of Sub Engineer. The proposal by the University to enhance the age of superannuation of the work charged employees from 60 to 62 years was admitted and the denial of the State Government to give approval to the said proposal is also admitted. It is the case of the respondents that since the age of superannuation of the work charged contingency paid employees was 60 years; therefore, the petitioner was rightly superannuated w.e.f. 31.7.2020. The order dated 21.4.2022 passed by the respondents with a condition no. 3 has also been admitted. It is submitted that the University in its 229$^{th}$ Board meeting dated 18.6.2021 had passed a resolution to extend the age of superannuation of the regularized daily wagers from 60 years to 62 years under the similar terms. Since, the daily wagers were paid out of the contingency fund; therefore, the work charged employees were also extended the same benefits. The regularized daily wagers which were reinstated on the terms, were not extended the benefit of back wages. The Madhya Pradesh Farmer Welfare and Agriculture Development Department vide its clarification dated 19.6.2012 had clarified that the work charged employees have separate rules for the salary and pension and at present, the administrative department does not have a provision to regularize the employees appointed on the work charges contingency basis. Accordingly, with the

approval of the State Government, the University has passed a pension scheme on 31.12.1994 for the employees appointed on regular basis. However, as per clause 1 (b), (c) and (d) of the Pension Scheme, the same was not extended to the employees paid out of contingency fund, daily wagers and contractual employees. It is the claim of the respondents that the petitioner was not forcefully retired but at that relevant time, the age of superannuation of the work charged employees was only 60 years, therefore, he was retired after attaining the age of 60 years. There is no question of payment of back wages.

9. Heard learned counsel for the parties.

10. Although various arguments were advanced but only question involved in the present case is as to whether the petitioner is entitled for back wages from 31.7.2020 i.e. the date on which he was retired till 25.4.2022 when he was reinstated in pursuance to the order dated 21.4.2022. It appears that the petitioner had assailed the order of his retirement by filing W.P.No.8314/2020. Thus, it is clear that the petitioner was interested to serve the department and he was not sitting idle as a fence sitter. Similarly, one Jagdish Singh had filed a writ petition against the order passed by the State Government, by which, the proposal sent by the University for enhancement of age of superannuation to 62 years was rejected. The said writ petition was allowed by Gwalior Bench of this Court by order dated 26.6.2021. During the pendency of the petition filed by petitioner (W.P.No.8314/2020), judgment in the case of **Jagdish Singh**

**(supra)** was pronounced. Since, there was already an order against the respondent University; therefore, it appears that on 21.4.2022 the impugned order was passed thereby granting permission to four employees including the petitioner for their reinstatement. However, the said order was not unconditional. It was passed subject to four conditions which are as under :-

> (i). The work charged employees who have already completed the age of 62 years on 22.12.2021 shall not be considered for reinstatement and shall not be given any consequential financial benefits.
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> (ii). Those work charged and contingency paid employees who do not join the service shall not be entitled for any financial benefits.
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> (iii) The work charged employees who submit their joining then they shall not be entitled for any financial benefits prior to date of their joining.
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> (iv) The work charged employees shall be under obligation to submit their joining within 15 days from the date of the order, failing which, no claim shall be considered thereafter.

11. The petitioner is aggrieved by condition no.3.
12. The minutes of 230$^{th}$ meeting convened on 22.12.2021 have been filed as Anneuxre-P/16, which has not been disputed by the respondents. There was no decision not to pay back wages to the persons who were entitled for reinstatement and had not completed the age of 62 years. The minutes of the 230$^{th}$ meeting convened on 22.12.2021 reads as under :-

प्रमण्डल (बोर्ड) की 230वीं बैठक बुधवार दिनांक 22.12.2021 को दोपहर 11.00 बजे की कार्यसूची के पद क्र.11 से संबंधित प्रारूप कार्य विवरण (Draft proceedings) की प्रतिलिपि :–

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x x x x

//संशोधित प्रारूप कार्य विवरण//

कार्यालयीन पृष्ठांकन क्र. गोप0/230वीं प्रमण्डल/477, दिनांक 24/01/2022 से जारी कार्य विवरण को निरस्त कर पूर्व में लिये गये निर्णय को मान्य किया जाता है। पद क्र. 11 विश्वविद्यालय के कार्यभारित एवं आकस्मिकता निधि से वेतन पाने वाले टाईम स्केल श्रमिकों की अधिवार्षिकी आयु 60 वर्ष से 62 वर्ष किये जाने के संबंध में।

निर्णय प्रमंडल द्वारा विश्वविद्यालय के कार्यभारित एवं आकस्मिकता निधि से वेतन पाने वाले टाईम स्केल श्रमिकों की अधिवार्षिकी आयु 60 वर्ष से 62 वर्ष किये जाने का अनुमोदन किया गया। (कार्यवाही–स्थापना शाखा–दो)

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x x x x

पृष्ठांकन क्रमांक–गोप0/230वीं प्रमण्डल/538 दिनांक 17/03/2022

प्रतिलिपि – सहायक कुलसचिव (स्थापना शाखा–दो) ज.ने.कृ.वि.वि. जबलपुर की ओर 07 दिवस के भीतर आगामी कार्यवाही संपन्न कर अधोहस्ताक्षरकर्ता को प्रेषित करने हेतु।

And on the very same day, the impugned order was also issued. Both the documents i.e. notification and impugned order dated 21.4.2022 contained a provision that the employees who have been reinstated shall not be entitled for back wages from the date of their retirement till the date of their joining.

13. Now, only question for consideration is as to whether the petitioners who were vigilantly prosecuting their cause but were

retired after attaining the age of 60 years and later on, were reinstated and allowed to work upto the age of 62 years, are entitled for back wages from the date of initial retirement till the date of reinstatement or not.

14. A Division Bench of this Court in the case of **Balkrishna Rathi vs. The State of Madhya Pradesh and others** decided on 7.9.2021 **(Indore Bench)** in W.A.No.378/2018, has held as under :-

> "10. It is not in dispute that orders passed by various Division Benches in the aforesaid writ appeals are relating to the same question i.e. entitlement of salary for the intervening period between 62 years to 65 years. Putting it differently, whether the teachers, who were retired at the age of 62 years are entitled to get benefit of salary for the period they were not permitted to perform their duty. The curtains on this issue are drawn by the Division Bench in the case of Dr. (Mrs.) Rukmani Tiwari (supra). The relevant portion reads as under:-
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> "As the appellant has already crossed 65 years of age, she will be entitled for entire arrears of wages for extended years of service. Though a cavil is raised on behalf of respondents that since the appellant had not worked for the period of 3 years she is not entitled for arrears on the principle of 'no work no pay'. However, in view of the fact that the appellant was prevented from discharging her duties till 65 years, the principle of 'no work no pay' is not applicable. For an authority reference can be had of the decision in State of Uttar Pradesh Vs. Dayanand Chakrawarty and others; (2013) 7 SCC 595, wherein it is held :

"43. Now the question arises as to what consequential benefits to which the respondents and other employees who have not moved before any court of law shall be entitled ?

44. By impugned judgment the High Court observed:

"Similar benefit is already available to the employees who are continuing in service by virtue of interim order passed by the competent court. They should continue till the age of 60 years. The law helps those who are vigilant and not to those who go to sleep as per maxim vigilantibus, et non dormientibus, jura subveniunt. So, this benefit will not be given to the employees who peacefully retired on attaining the age of 58 years and never came before the Court. But there may be another class of the employees who came before this Court and could not get the interim order but writ petitions were admitted. Admittedly, these employees have not worked. So, on the basis of no pay no work, they will not be entitled for arrears. However, their back wages will be restricted @ 20% of the basic salary as per the ratio laid down in the case of M/s Gvalli v. Andhra Education Society 2010 AIR 1105 SC. Lastly, it is clarified that the extended service will be counted for all the purpose to the above mentioned employees. The petitions are allowed. No cost."

45. In Harwindra Kumar vs. Chief Engineer, Karmik and others (Supra), this Court while allowing the employees of Nigam to continue till the age of 60 years in view of Regulation 31, ordered that no recovery shall be made from those who continued up to the age of 60

years. This Court further observed that the employees who have not been allowed to continue after completing the age of 58 years by virtue of erroneous decision taken by the Nigam for no fault of theirs, would also be entitled to payment of salary for the remaining period up to the age of 60 years.

46. In U.P. Jal Nigam vs. Radhey Shyam Gautam, following the decision in Harwindra Kumar (supra) case, this Court held that the employees of the Nigam shall be entitled for full salary for the remaining period up to the age of 60 years.

47. However, in U.P. Jal Nigam vs. Jaswant Singh, this Court allowed the benefits of arrears of salary only to those employees of the Nigam who had filed writ petitions and denied the same to others who have not moved before a court of law.

48. In view of the orders passed by this Court in Harwindra Kumar (supra), Radhey Shyam Gautam (supra) and Jaswant Singh (supra), it was not open to the High Court to rely on some other decision of this Court, ratio of which is not applicable in the present case for determining back wages of respondents restricting it to be 20% of the basic salary. We observe that the principle of 'no pay no work' is not applicable to the employees who were guided by specific rules like Leave Rules etc. relating to absence from duty. Such principle can be applied to only those employees who were not guided by any specific rule relating to absence from duty. If an employee is prevented by the employer from performing his duties, the employee cannot be blamed for having not worked, and the principle of 'no pay no work' shall not be applicable to such employee.

49. In these cases as we have already held that Regulation 31 shall be applicable and the age of superannuation of employees of the Nigam shall be 60 years; we are of the view that following consequential and pecuniary benefits should be allowed to different sets of employees who were ordered to retire at the age of 58 years:

49.1. The employees including respondents who moved before a court of law irrespective of fact whether interim order was passed in their favour or not, shall be entitled for full salary up to the age of 60 years. The arrears of salary shall be paid to them after adjusting the amount if any paid.

49.2. The employees, who never moved before any court of law and had to retire on attaining the age of superannuation, they shall not be entitled for arrears of salary. However, in view of Regulation 31 they will deem to have continued in service up to the age of 60 years. In their case, the appellants shall treat the age of superannuation at 60 years, fix the pay accordingly and re-fix the retirement benefits like pension, gratuity etc. On such calculation, they shall be entitled for arrears of retirement benefits after adjusting the amount already paid.

49.3. The arrears of salary and arrears of retirement benefits should be paid to such employees within four months from the date of receipt of copy of this judgment."

Similar view has been expressed in **Shobha Ram Raturi Vs. Haryana Vidyut Prasaran Nigam Ltd. & others; (2016) 16 SCC 663,** wherein it is held :

"The fault lies with the respondents in not having utilised the services of the

appellant for the period from 1.1.2003 to 31.12.2005. Had the appellant been allowed to continue in service, he would have readily discharged his duties. Having restrained him from rendering his services with effect from 1.1.2003 to 31.12.2005, the respondent cannot be allowed to press the self serving plea of denying him wages for the period in question, on the plea of the principle of 'no work no pay'."

In view whereof, the contention raised on behalf of the respondents that the appellant will not be entitled for arrears on the principle of 'no work no pay' is negatived. The appellant is held entitled for entire service benefit as if she was in service till 65 years of age. Let the arrears be settled within three months. The settlement of arrears will be subject to adjustment of if any amount paid towards retiral dues. It is further directed that the amount of arrears be paid by the Institution where the appellant was in service. The institution will be at liberty to recover from the State as per law.

Appeal stands disposed of finally in above terms. No costs."

***[Emphasis Supplied]***

11. This view is consistently followed in the case of Dr. Sushant Kumar Sinha and Dr. R.K. Thassu (supra) by other Division Benches. The Principal Seat in Dr. Sushant Kumar Sinha (supra), considered the circular of Higher Education Department and opined as under:-

"5. It is pertinent to note that the decision in R.S. Sohane (supra) has been implemented by the State Government vide its Order No.1-23/2019/38-3 dated 26.02.2020, reproduced below for ready reference :

उच्च शिक्षा विभाग
मंत्रालय
// आदेश //
भोपाल, दिनांक 26.02.2020

क्रमांक एफ 1–23/2019/38–3 : माननीय उच्चतम न्यायालय नई दिल्ली द्वारा Civil ppeal No.4675 and 4676 of 2019 out of SLP(C) No.31968- 1969/2017 में डॉ आर. एस. सोहाने विरूद्ध मध्यप्रदेश शासन व अन्य तथा इस याचिका से संयुक्त अन्य समतुल्य सभी यचिकाओं में पारित निर्णय दिनांक 07.05.2019 में निर्देश दिये गये हैं कि :

For the aforementioned reasons, we set aside the judgment of the Full Bench of the High Court and the consequential judgments of the Division Bench of the High Court and direct the Government of Madhya Pradesh to pay salaries to the Teachers in aided private Colleges who are working and also those who have worked till they attained the age of superannuation of 65 years.

माननीय उच्चतम न्यायालय के निर्णय के अनुपालन में राज्य शासन द्वारा निर्णय लिया गया है कि अनुदान प्राप्त अशासकीय महाविद्यालय में अनुदानित पदों पर कार्यरत् शिक्षकों की अधिवार्षिकी आयु 62 वर्ष से बढाकर 65 वर्ष निर्धारित की जाती है तथा ऐसे lHkh ik= f'k{kdk d oru dk Hkqxrku jkT; 'kklu }kjk fd;k tkosxk A

2/ यह स्वीकृति महालेखाकार, मध्यप्रदेश ग्वालियर को वित्त विभाग के पृष्ठांकन क्रमांक 375/2020/वित्त/नियम/चार दिनांक 26.02.2020 से पृष्ठांकित की जाती है ।

मध्यप्रदेश के राज्यपाल के नाम से
तथा आदेशानुसार

6. Thus, with the decision in R.S. Sohane (supra), the issue as to the retirement age of the staff engaged in class room teaching in Govt. aided institution to be 65 years stood settled.

7. The petitioner who had bowed down to the decision by the Full Bench as on 02.08.2017, has, with the law being laid down by the Supreme Court in R.S. Sohane (supra), filed this appeal seeking setting aside of the

impugned order and for the benefit which enure from the decision in R.S. Sohane (supra). It is urged, and rightly so that, with the law being settled and the petitioner being within the ambit of its applicability, as he is retired on 30.11.2015 at the age of 62 years, he has a right to claim the benefit, thereunder.

8. In view whereof, we are of the considered opinion that since the petitioner was engaged in class room teaching in grant-in-aid private institution, he is entitled to enhanced age of retirement of 65 years, with all consequential benefits, to be borne by the State of Madhya Pradesh.

9. The appeal is finally disposed of in above terms. No costs."

***[Emphasis supplied]***

12. At the cost of repetition, the appellants in all aforesaid writ appeals and the present appellants are similarly situated. All of them were prematurely retired at the age of 62 years. As per judgment of the Supreme Court in Dr. R.S. Sohane (supra), they were taken back. Thus, the judgment of Dr. R.S. Sohane (supra) is a judgment in rem. There is no quarrel between the parties about the age of superannuation of teachers i.e. 65 years. The only question raised by Shri Pushyamitra Bharga, learned Additional Advocate General is based on the order of the learned Single Judge. The same was the situation in all the aforesaid writ appeals because writ appeals were filed against orders passed by learned Single benches which became different after the judgment of Dr. R.S. Sohane (supra). The principles of "no work no pay" cannot be applied because appellants were willing to perform their duties which is very evident for the simple reason that even before retirement

order could be translated into reality, they filed writ petition.

13. The Apex Court in its recent judgment in North Delhi Municipal Corporation (supra) quoted with profit the previous judgment reported in (2013) 7 SCC 595 The State of Uttar Pradesh v/s Dayanand Chakrawarthy & Others relevant portion of which reads as under:-

"48. If an employee is prevented by the employer from performing his duties, the employee cannot be blamed for having not worked, and the principle of 'no pay no work' shall not be applicable to such employee..."

14. Once it is clear that the reason for non-payment of salary for intervening period to present appellants and other similarly situated persons who were appellants in aforesaid writ appeals is same, the only question is whether there exists any justifiable reason to put the present appellants in a comparatively disadvantageous position. In our opinion, if we take a different view, it will be a travesty of justice. It is profitable to consider the judgment of the Supreme Court on this aspect reported in (1985) 2 SCC 468 (Inder Pal Yadav & Others v/s Union of India & Others). Relevant portion of the aforesaid case reads as under:-

"There is another area where discrimination is likely to rear its ugly head. These workmen come from the lowest grade of railway service. They can ill afford to rush to court. Their Federations have hardly been of any assistance. They had individually to collect money and rush to court which in case of some may be beyond their reach. Therefore, some of the retrenched workmen failed to knock at the doors of the court of

> justice because these doors do not open unless huge expenses are incurred. Choice in such a situation, even without crystal gazing is between incurring expenses for a litigation with uncertain outcome and hunger from day to day. It is a Hobson's choice. Therefore, those who could not come to the court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly situated, they are entitled to similar treatment if not by anyone else at the hands of this Court."
>
> ***[Emphasis Supplied]***
>
> If we take a different view and deprive the similarly situated appellants from the benefit of salary for intervening period, it will amount to dividing a homogeneous class of Teachers and create a class within the class.
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> 15. This will be contrary to the mandate of article 14 of the Constitution of India. In this view of the matter, we are unable to hold that the appellants can be deprived from benefit of salary for the intervening period."

15. Thus, it is clear that where the employees were not fence sitter and were vigilantly prosecuting their cause, then they cannot be deprived of the fruits of back wages by applying the principle of "no work no pay". The principle of "no work no pay" would apply only when a person was not interested to serve the department. The principle of "no work no pay" would apply when the employee was not kept away by any order of the employer. The doctrine of "no work no pay" is basically based on the principle that a person is not entitled to claim back wages

for the period in which he was absent without any justifiable reason or without any leave.

16. The Supreme Court in the case of **Gowramma C (Dead) by L.rs. Vs. Manager (Personnel) Hindustan Aeronautical Ltd. And another, decided on 23.2.2022 in Civil Appeal Nos.1575- 1576 of 2022** has held that "the most important question is as to whether employee was at fault in any manner or not. If the employee was not at all at fault and was kept out of work by the reasons of the decision taken by the employer, then to deny the fruits of her being vindicated at the end of the day would be unfair to the employee."

17. The Supreme Court in the case of **Shobha Ram Raturi Vs. Haryana Vidyut Prasaran Nigam Ltd. & others; (2016) 16 SCC 663** has held that "principle of no work no pay would not apply and the employee would be entitled for back wages as he was restrained from working by the employer."

18. The Supreme Court in the case of **State of Uttar Pradesh Vs. Dayanand Chakrawarty and ors. (2013) 7 SCC 595** has held as under :-

> **43.** Now the question arises as to what consequential benefits to which the respondents and other employees who have not moved before any court of law shall be entitled?
>
> **44.** By the impugned judgment [*Dayanand Chakrawarty* v. *State of U.P.*, (2010) 6 All LJ 1] the High Court observed:
>
> "Similar benefit is already available to the employees who are continuing in service by virtue of interim order passed by the competent court. They should continue till the age of 60 years.

The law helps those who are vigilant and not to those who go to sleep as per maxim *vigilantibus, et non dormientibus, jura subveniunt*. So, this benefit will not be given to the employees who peacefully retired on attaining the age of 58 years and never came before the Court. But there may be another class of the employees who came before this Court and could not get the interim order but writ petitions were admitted. Admittedly, these employees have not worked. So, on the basis of no pay no work, they will not be entitled for arrears. However, their back wages will be restricted @ 20% of the basic salary as per the ratio laid down in *G. Vallikumari* v. *Andhra Education Society* [(2010) 2 SCC 497 : (2010) 1 SCC (L&S) 406 : AIR 2010 SC 1105] . Lastly, it is clarified that the extended service will be counted for all the purpose to the abovementioned employees. The petitions are allowed. No costs."

**45.** In *Harwindra Kumar* v. *Chief Engineer, Karmik* [*Harwindra Kumar* v. *Chief Engineer, Karmik*, (2005) 13 SCC 300 : 2006 SCC (L&S) 1063] this Court while allowing the employees of the Nigam to continue till the age of 60 years in view of Regulation 31, ordered that no recovery shall be made from those who continued up to the age of 60 years. This Court further observed that the employees who have not been allowed to continue after completing the age of 58 years by virtue of erroneous decision taken by the Nigam for no fault of theirs, would also be entitled to payment of salary for the remaining period up to the age of 60 years.

**46.** In *U.P. Jal Nigam* v. *Radhey Shyam Gautam* [(2007) 11 SCC 507 : (2008) 1 SCC

(L&S) 59] following the decision in *Harwindra Kumar case* [*Harwindra Kumar* v. *Chief Engineer, Karmik*, (2005) 13 SCC 300 : 2006 SCC (L&S) 1063] , this Court held that the employees of the Nigam shall be entitled for full salary for the remaining period up to the age of 60 years.

**47.** However, in *U.P. Jal Nigam* v. *Jaswant Singh* [*U.P. Jal Nigam* v. *Jaswant Singh*, (2006) 11 SCC 464 : (2007) 1 SCC (L&S) 500] , this Court allowed the benefits of arrears of salary only to those employees of the Nigam who had filed writ petitions and denied the same to others who have not moved before a court of law.

**48.** In view of the orders passed by this Court in *Harwindra Kumar* [*Harwindra Kumar* v. *Chief Engineer, Karmik*, (2005) 13 SCC 300 : 2006 SCC (L&S) 1063] , *Radhey Shyam Gautam* [(2007) 11 SCC 507 : (2008) 1 SCC (L&S) 59] and *Jaswant Singh* [*U.P. Jal Nigam* v. *Jaswant Singh*, (2006) 11 SCC 464 : (2007) 1 SCC (L&S) 500] , it was not open to the High Court to rely on some other decision of this Court, ratio of which is not applicable in the present case for determining back wages of the respondents restricting it to be 20% of the basic salary. We observe that the principle of "no pay no work" is not applicable to the employees who were guided by specific rules like Leave Rules, etc. relating to absence from duty. Such principle can be applied to only those employees who were not guided by any specific rule relating to absence from duty. If an employee is prevented by the employer from performing his duties, the employee cannot be blamed for having not worked, and the principle of "no

pay no work" shall not be applicable to such employee.

**49.** In these cases as we have already held that Regulation 31 shall be applicable and the age of superannuation of employees of the Nigam shall be 60 years; we are of the view that following consequential and pecuniary benefits should be allowed to different sets of employees who were ordered to retire at the age of 58 years:

**49.1.** The employees including the respondents who moved before a court of law irrespective of the fact whether interim order was passed in their favour or not, shall be entitled for full salary up to the age of 60 years. The arrears of salary shall be paid to them after adjusting the amount if any paid.

**49.2.** The employees, who never moved before any court of law and had to retire on attaining the age of superannuation, they shall not be entitled for arrears of salary. However, in view of Regulation 31 they will deem to have continued in service up to the age of 60 years. In their case, the appellants shall treat the age of superannuation at 60 years, fix the pay accordingly and re-fix the retirement benefits like pension, gratuity, etc. On such calculation, they shall be entitled for arrears of retirement benefits after adjusting the amount already paid.

**49.3.** The arrears of salary and arrears of retirement benefits should be paid to such employees within four months from the date of receipt of copy of this judgment.

19. Similarly, the Supreme Court in the case of **Airport Authority of India & ors. Vs. Shambhunath Das @ S. N. Das, decided on 16.5.2008 in Civil Appeal No.3617/2008** has held that "once the

employee did not join his service then he cannot claim back wages that he remained absent without leave or without justification."

20. Thus, the basic concept for applying the doctrine of no work no pay is as to whether the employee was restrained or was kept away by the employer from serving the department or whether the employee was a fence sitter and was not interested in serving the department. As already pointed out the petitioner was not a fence sitter. He was fighting for his cause. There was already a judgment by the High Court in the case of **Jagdish Singh (supra)** which was in favour of the petitioner in which it was held that the work charged employee is also entitled for work upto the age of 62 years.

21. Under these circumstances, this Court is of the considered opinion that not only condition no. 3 in the impugned order dated 21.4.2022 was not approved by the 230$^{th}$ Board meeting which was held on 22.12.2021 but the petitioner who was unauthorizedly kept away from serving the department after the age of 60 years cannot be denied for his benefits for the period from the date of his superannuation after attaining the age of 60 years till the date of his reinstatement. The fact that the impugned order dated 21.4.2022 was passed thereby permitting the reinstatement of the employees who had not completed the age of 62 years on the date on 22.12.2021 i.e. when the decision was taken by the Board in its 230$^{th}$ meeting, clearly means that the order was made retrospective in operation and under these circumstances, such employees cannot be denied their back wages.

22. Accordingly, condition no. 3 so far as it relates to non-payment of back wages as incorporated in the impugned order dated 21.4.2022 Annexure-P/15 is hereby **quashed.**

23. It is held that the petitioner shall be entitled for his back wages from the date of his superannuation i..e 31.7.2020 till 25.4.2022 i.e. the date of his reinstatement. The same shall be paid within a period of 3 months from today, failing which; it will carry interest @ 6% per annum till the actual payment is made.

24. Petition succeeds and is hereby **allowed.**

**(G.S. AHLUWALIA)**
**JUDGE**

JP