



Reserved on : 12/06/2024

Delivered on : 26/06/2024

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WA No. 79 of 2024

1. Anjali Tiwari D/o Shri Kamlesh Tiwari Aged About 25 Years R/o Near SBI Bank, In Front Of Airtel Tower, Ward No.9, Wadrafnagar, District - Balrampur (C.G.) - 497225

2. Jyotika Sa D/o Ghanshyam Sa Aged About 25 Years Resident Of Belpahad, Gandhi - Nagar, Jharsuguda (Orisha) - 768217

---- Appellants

Versus

1. Guru Ghasidas University Through Its Vice - Chancellor, Koni, Bilaspur, Chhattisgarh

2. Head Of Department Department Of Biotechnology, Guru Ghasidas University, Koni, Bilaspur, Chhattisgarh

3. Dean Schools Of Studies Of Interdisciplinary Education And Research, Guru Ghasidas University, Koni, Bilaspur, (Chhattisgarh)

4. Miss. Prachi D/o. Satish Kumar R/o. Ward No. 4, 253, Beside K.H. International School, Jamul, Bhiali, District - Durg, Chhattisgarh.

5. Miss. Shivangi Chaurassia D/o. Arun Kumar R/o. House No. 19, Arpa Exotica Residency, Ratanpur Road, Bilaspur, District - Bilaspur, Chhattisgarh.

---- Respondents

(Cause Title taken from Case Information System)

For Appellants : Mr. Palash Tiwari, Advocate

For Respondents 1 to 3 : Mr. Neeraj Chaubey, Advocate

For Respondents 4 and 5 : Ms. Naushina Ali, Advocate

Hon'ble Mr. Ramesh Sinha, Chief Justice

Hon'ble Mr. Sachin Singh Rajput, Judge

C A V JUDGMENT

Per Ramesh Sinha, Chief Justice

1. The present writ appeal arises out of order dated 24/01/2024 passed by

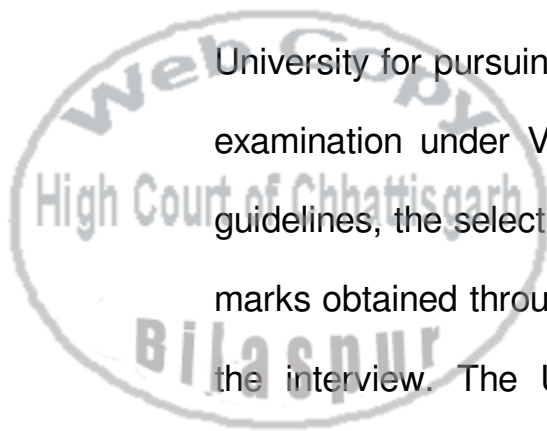


the learned Single Judge in WPC No.3124 of 2023 (*Anjali Tiwari and Anr. Vs. Guru Ghasidas University and ors.*).

2. In this appeal, the appellant has made the following prayer -

“It is, therefore, prayed that, this Hon’ble Court may kindly be pleased to allow the appeal and set aside the order impugned dated 24/01/2024 (Annexure A/1) passed by the Hon’ble Single Bench of this Hon’ble Court in WP (C) No.3124/2023 in the interest of justice.”

3. Facts of the case in brief is that the appellants are the students pursuing B.Sc. from the respondent / university passed out in the year 2023 and they were desirous to pursue Ph.D. in the field of Biotechnology. In pursuance to the advertisement along with guidelines issued by Registrar of Guru Ghasidas University for pursuing Ph.D. present appellants applied and appeared in the examination under VRET category (written examination). According to the guidelines, the selection of VRET candidates shall be on the basis of 70% of marks obtained through the written examination and the remaining 30% from the interview. The University allowed 02 seats for the VRET Category (unreserved) and for the exempted category 05 seats were allocated for the Biotechnology subject. The written examination was conducted on 08/04/2023 and the results were declared on 18/04/2023. The appellants were declared as the merit holders for the said examination. Appellant No.1 secured 73 marks out of 100 and appellant No.2 scored 72 marks out of total of 49 students. Respondent No.4 scored 61 marks, respondent No.5 scored 46 marks. The interview was scheduled on 14th and 15th June, 2023 for qualified candidates of the VRET examination. The interview was conducted by a Committee of 5 members and the final results were declared on 19/06/2023. Thereafter, respondents 4 and 5 were selected for the VRET





category.

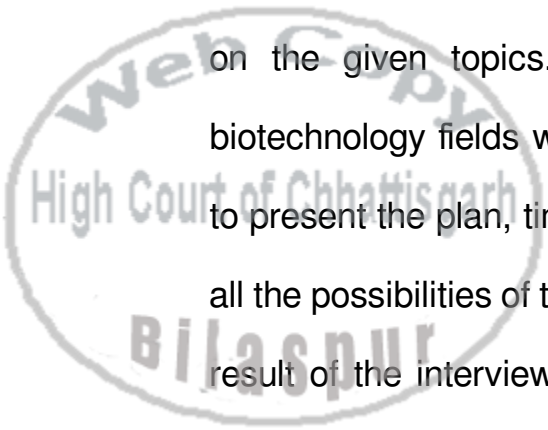
4. Learned counsel for the appellants submits that the selection process is an absolute act of favoritism and the learned Single Judge failed to appreciate the fact that the respondent / University has applied incorrect methods to award marks. It is submitted that the present appellants were toppers in the written examination whereas respondents 4 and 5 were placed at Serial No.11 and 33 respectively and they have been selected by the respondent / University by awarding higher marks in the interview. He further submitted that the learned Single Judge had not considered the contentions and pleas of the appellants that appellants 1 and 2 have been awarded 09 average marks in the interview out of 30 whereas respondent No.4 has scored 25 marks out of 30 and respondent No.5 has scored 29 marks out of 30 which would clearly show biasness and favoritism. He further submitted that the learned Single Judge did not appreciate the factual position that no reservation roster has been applied in the selection process, therefore, no relaxation can be given. He goes on to submit that the procedure for awarding the marks for admission of the candidates for pursuing Ph.D. program is contrary to the University Grants Commission (Minimum Standards and Procedures for Award of Ph.D. Degree) Regulations, 2022 (for short Regulation, 2022). Therefore, he prayed that the appeal may be allowed and impugned order may be set aside.

5. Learned counsel for respondent 1 to 3 submitted that the interview was conducted by the Committee of 05 Members and respondents No.4 and 5 scored higher marks than the appellants. He would further argue that the award of higher marks cannot be a ground to challenge the selection of respondents No.4 and 5. It is stated that 70% weightage would be given to the marks obtained in online VRET, whereas for personal interviews/viva-



voce/presentation, 30 marks have been allocated and thus total marks would be 100. He would further contend that 70% marks obtained by the candidates in the written examination and the marks obtained in the interview out of 30 were taken into consideration for preparation of the merit list. He further submitted that the admission process was carried out in accordance with the Guru Ghasidas Vishwavidyalaya, Doctor of Philosophy (Ph.D.) Degree Regulations, 2023 (for short Regulation,2023).

6. Learned counsel for respondent No.4 and 5 submitted that both respondents through general notice were directed to submit the research proposal and to present research plan with reference of supervisors. Accordingly, they submitted and presented their respective research proposal on the given topics. In the presentation, the subject experts from the biotechnology fields were present and the answering respondents were able to present the plan, timeline and future outcomes of their research topics with all the possibilities of the resources which are available in the department. The result of the interview was released on the website of the University where they were selected in VRET category. It is submitted that the allegation of favoritism in their favour is totally false and baseless. It is submitted that the appellants have misinterpreted the distribution of marks for the qualification. As per guidelines for admission to the Ph.D. program 2022-23, clause C, 70% marks will be taken from VRET online written test that is 70% of the total 100 marks for which written exam was conducted and 30 marks for interview and not 30% of the 30 marks prescribed for interview, therefore, total marks for evaluation is 100. For VRET Exempted category 50% of marks were taken from academics and 50 marks from the interview conducted, therefore, total marks for the evaluation is 100. It is submitted that the selection process is





absolutely subject to respective University guidelines and under respective in-charge authorities' decision. Therefore, the appeal is liable to be dismissed.

7. We have heard learned counsel for the parties, perused the impugned order and material available on record.

8. In order to appreciate the controversy involved in the appeal it would be apt to quote the relevant portion of chart showing the performance and marks in respect the appellants and the respondent no. 4 & 5 as reflected from Annexure R/2 filed by the respondent no. 1 to 3 with its return.

Date and Mode of Interview	Student Name & application ID	Roll No.	Category	VRET Marks	Weightage of VRET Marks (70%)	Interview Marks/30	Total Marks	Merit Order
14/04/2024 Offline	Anjali Tiwari PHDV3 136506 106	106006	UR	73	51.1	9	60.1	5 (WL3)
14/04/2024 Offline	Jyotika Sa PHDV3 385009 106	1060018	UR	72	50.4	9	59.4	6 (WL4)
14/04/2024 Offline	Prachi PHDV3 140660 16	1060029	SC	61	42.7	25	67.7	1
14/04/2024 Offline	Shivangi Chaurasia PHDV3 347782 106	1060036	OBC	46	32.2	29	61.2	2

9. From perusal of the above chart it is apparent that the appellants secured more marks than the respondent no.4 & 5 in the VRET written examination. However, the position is *vice versa* in the interview. Learned Counsel for the appellant vehemently argued that marks given to respondent



no. 4 & 5 in interview is a pertinent example of favoritism, bias. The respondent no. 4 & 5 have been given much higher marks by the interview board which cannot be accepted and requires interference by this Court. Allegation of favoritism and bias has been made in the interview process but no specific pleadings in this regard is made in the Writ Petition. The only ground upon which the favoritism and bias is alleged is with regard to excessive marks given to respondent no.4 & 5. Interview panel consisted of 6 interviewer as reflected from Annexure R/4 filed with the additional return of the respondent no.1 to 3. Each interviewer has given their own individual marks to the candidates and thereafter average marks were noted. They are experts in their field. One external Expert was also the member of the interview panel. The Court cannot be judge of the merits of the candidates as it is in the domain of the expert of that field. The appellants could not show as to how the interview panel acted in favoritism and bias against them. It is very difficult to believe that all the six interviewers have any bias against the appellants or favoritism towards respondent no. 4 & 5. Simply because excessive marks were given to the respondent no.4 & 5 it would not amount to favoritism or bias towards any candidate, particularly in absence of any cogent material on record.

10. Hon'ble Supreme Court way back in case of **Lila Dhar vs. State of Rajasthan, (1981) 4 SCC 159** made the following pertinent observations with regard to the importance of a viva-voce or interview in a selection process:

"It is now well recognised that while a written examination assesses a candidate's knowledge and intellectual ability, an interview test is valuable to assess a candidate's overall intellectual and personal qualities. While a written examination has certain distinct advantage over the interview test there are yet no written tests which can



evaluate a candidate's initiative, alertness, resourcefulness, dependableness, cooperativeness, capacity for clear and logical presentation, effectiveness, in discussion, effectiveness in meeting and dealing with others, adaptability, judgment, ability to make decision, ability to lead, intellectual and moral integrity. Some of these qualities may be evaluated, perhaps with some degree of error, by an interview test, much depending on the Constitution of the interview Board."

11. In case of **R. Chitrakha Vs. State of Mysore and others, 1964 SCC OnLine SC 88** it has been observed by the Hon'ble Supreme Court as under:-

"In the field of education there are divergent views as regard the mode of testing the capacity and calibre of students in the matter of admissions to colleges. Orthodox educationists stand by the marks obtained by a student in the annual examination. The modern trend of opinion insists upon other additional tests, such as interview, performance in extra-curricular activities, personality test, psychiatric tests etc. Obviously we are not in a position to judge which method is preferable or which test is the correct one. If there can be manipulation or dishonesty in allotting marks at interviews, there can equally be manipulation in the matter of awarding marks in the written examinations. In the ultimate analysis, whatever method is adopted its success depends on the moral standards of the members constituting the selection committee and their sense of objectivity and devotion to duty. This criticism is more a reflection on the examiners than on the system itself. The scheme of selection, however perfect it may be on paper, may be abused in practice. That it is capable of abuse is not a ground for quashing it. So long as the order lays down relevant objective criteria and entrusts the business of





selection to qualified persons, this Court cannot obviously have any say in the matter.”

12. In a recent decision in case of **Tajvir Singh Sodhi & ors. Vs. The State of Jammu and Kashmir & Ors., 2023 LiveLaw (SC)** Hon’ble Supreme Court observed that *“The criteria for evaluation of a candidate’s performance in an interview may be diverse and some of it may be subjective. However, having submitted to the interview process with no demur or protest, the same cannot be challenged subsequently simply because the candidate’s personal evaluation of his performance was higher than the marks awarded by the panel - Simply because the result of the selection process is not palatable to a candidate, he cannot allege that the process of interview was unfair or that there was some lacuna in the process.”*

13. Having thus considering the submissions of the learned counsel for the parties and on meticulous examination of the record and also placing reliance of the above cited authorities, we are unable to accept that there was any favoritism or bias in the interview process. Hence the submission of Shri Palash Tiwari has no force and is repelled.

14. This leads us to the next submission of Shri Tiwari with regard to procedure for awarding the marks for admission of the candidates for pursuing Ph. D. program being contrary to Regulation, 2022. It is pertinent to add here that the Respondent No. 1 to 3 did not file the complete Regulation, 2023 but the same was placed on record by appellants in the writ petition by way of covering memo. Since the arguments in this regard was advanced, we deem it appropriate to deal with it. Before delving into merits of this submission it would be necessary to quote the regulation 5 of



Regulation,2022 which deals with the procedure for admission in Ph.D. program as under:-

5. Procedure for admission. -

(1) The admission shall be based on the criteria notified by the institution, keeping in view the guidelines/norms in this regard issued by the UGC and other statutory/regulatory bodies concerned, and taking into account the reservation policy of the Central/State Government from time to time.

(2) Admission to the Ph.D. programme shall be made using the following methods:

i. HEIs may admit students who qualify for fellowship/scholarship in UGC-NET/UGC- CSIR NET/GATE/CEED and similar National level tests based on an interview. And/or

ii. HEIs may admit students through an Entrance Test conducted at the level of the individual HEI. The Entrance Test syllabus shall consist of 50% of research methodology, and 50% shall be subject specific.

iii. Students who have secured 50 % marks in the entrance test are eligible to be called for the interview.

iv. A relaxation of 5 % marks will be allowed in the entrance examination for the candidates belonging to SC/ST/OBC/differently-abled category, Economically Weaker Section (EWS), and other categories of candidates as per the decision of the Commission from time to time.

v. HEIs may decide the number of eligible students to be called for an interview based on the number of Ph.D. seats available.

vi. Provided that for the selection of candidates based on the entrance test conducted by the HEI, a weightage of 70 % for the entrance test and 30 % for the performance in





the interview/viva- voce shall be given.

(3) Universities and Colleges which are eligible to conduct Ph.D. programmes, shall:

i. Notify a prospectus well in advance on the institution's website specifying the number of seats for admission, subject/discipline-wise distribution of available seats, criteria for admission, the procedure for admission, and all other relevant information for the candidates;

ii. Adhere to the National/State-level reservation policy, as applicable.

(4) The Higher Educational Institution shall maintain a list of Ph.D. supervisors (specifying the name of the supervisor, his or her designation, and the department/school/centre), along with the details of Ph.D. scholars (specifying the name of the registered Ph.D. scholar, the topic of his/her research and the date of admission) admitted under them on the website of the institution and update this list every academic year.

15. In the same breath we deem it appropriate to quote the relevant provision of Regulation, 2023 dealing with the procedure for admission in Ph.D. program as under:-

R.5 Procedure for admission. –

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5.3 University will admit applicants by a two-stage process mentioned below or as notified by the University from time to time:

The qualifying marks for the Entrance Test shall be 50%. The syllabus of the Entrance Test shall consist of 50% of research methodology and 50% shall be subject specific. The VRET would be of 120 minutes duration. There would be a single question paper of 100 marks having 100



multiple choice questions for assessing the subject proficiency and research aptitude of the candidate. The admission shall be based on the marks obtained above qualifying marks in VRET and in order of merit.

A relaxation of 5 % marks will be allowed in the entrance examination for the candidates belonging to SC/ST/OBC/differently-abled category, Economically Weaker Section (EWS), and other categories of candidates as per the decision of the Commission from time to time.

GGV may decide the number of eligible students to be called for an interview based on the number of Ph.D. seats available.

Provided that for the selection of candidates based on the entrance test conducted by the GGV, a weightage of 70 % for the entrance test and 30 % for the performance in the interview/viva- voce shall be given.

The eligibility or qualifying marks will not be a guarantee for admission.

The syllabus of the VRET will be the same as prescribed by the respective Board of Studies. The fee for the Application Form for Ph.D. admissions, prescribed for different categories, would be as prescribed by the University from time to time.

16. On comparative study of Regulation,2022 and Regulation,2023 shows no significance difference with regard to weightage of percentage for written test and interview/viva- voce. However, the respondent no.1 to 3 issued guidelines for admission to Ph.D. programme 2022-23 following which the procedure of admission to Ph.D. programme was carried out. The relevant portion of the guidelines is reproduced herein below:-

C. Procedure for admission



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Provided that for the selection of candidates based on the entrance test conducted by the GGV, a weightage of 70% for the entrance test and 30 % for the performance in the interview/viva- voce shall be given.

The eligibility or qualifying marks will not be a guarantee for admission.

XXXXXX

Distribution of marks will be as follows-

i Marks obtained in Online VRET- weightage 70% of the marks obtained (Maximum 70)

ii Personal Interview/Viva-voce/Presentation-30

Total 100

17. University Grants Commission Act, 1956 (for short UGC Act) was enacted with an object to make provision for the co-ordination and determination of standards in Universities and for that purpose, to establish a University Grants Commission. Section 2(f) of UGC Act defines university as “University” means a University established or incorporated by or under a Central Act, a Provincial Act or a State Act, and includes any such institution as may, in consultation with the University concerned, be recognised by the Commission in accordance with the regulations made in this behalf under this Act. The UGC issues regulations for ensuring quality, standard and uniformity in the education imparted by the universities. These regulations cover different aspects, such as curriculum design, teacher qualifications, necessary infrastructure, and other parameters which are necessary and essential for maintaining academic standards amongst universities.

18. The Hon’ble Supreme Court in case of **Kalyani Mathivanan v. K.V. Jeyaraj and others, (2015) 6 SCC 363** held thus:



“27. From the aforesaid provisions, we find that the University Grants Commission has been established for the determination of standard of universities, promotion and coordination of university education, for the determination and maintenance of standards of teaching, examination and research in universities, for defining the qualifications regarding the teaching staff of the university, maintenance of standards, etc. For the purpose of performing its functions under the UGC Act (see Section 12) like defining the qualifications and standard that should ordinarily be required of any person to be appointed in the universities [see Sections 26(1)(e) & (g)] UGC is empowered to frame regulations. It is only when both the Houses of Parliament approve the regulation, the same can be given effect to. Thus, we hold that the UGC Regulations though a subordinate legislation has binding effect on the universities to which it applies; and consequence of failure of the university to comply with the recommendations of the Commission, UGC may withhold the grants to the university made out of the fund of the Commission (see Section 14).”

19. In light of the above authoritative pronouncement of the Hon'ble Supreme Court that the Regulation, 2022 is binding on the respondent no. 1 to 3 for the purpose of procedure to be adapted for admission in the Ph.D. programme. No contrary procedure as prescribed in Regulation, 2022 can be adapted by the respondent no.1 to 3. As we stated earlier there seems to be no significance difference in this regard in the Regulation,2022 and Regulation,2023, however a departure is carved out in the guidelines issued for the same in which distribution of marks have been created. Which provides for VRET-weightage of 70% of the marks obtained (Maximum 70) and 30 marks for viva-voce/interview/presentation. This is contrary to the



scheme of allotment of marks as provided in the Regulation,2022. Regulation,2023 also does not disclose such distinction. The guidelines issued by the respondent no. 1 to 3 are in the nature of administrative / executive instructions. It is a settled principle of law that executive instructions cannot override the statutory rules or add something to it.

20. In case of **Union of India and others Vs. Rakesh Kumar, (2001) 4 SCC 309** the Hon'ble Supreme Court observed that "*there cannot be any doubt that Government cannot amend or substitute statutory rules by administrative instructions, but if the rules are silent on any particular point, the Government can fill up the gaps and supplement the rules by issuing instructions not inconsistent with the rules.*" In case of **State of Maharashtra Vs. Jagannath Achyut Karandikar, 1989 Supp (1) SCC 393** it has been observed by the Hon'ble Supreme Court that "*The Government could not have restricted the operation of the Statutory Rules by issuing the executive instruction. The executive instruction may supplement but cannot supplant the statutory rules.*" Yet again in case of **State of Madhya Pradesh and others Vs. M/s G.S. Dall & Flour Mills, 1992 Supp (1) SCC 150** it has been observed by the Hon'ble Court Executive instructions can supplement a statute or cover areas to which the statute does not extend. But they cannot run contrary to statutory provisions or whittle down their effect.

21. A strenuous argument was advanced by learned counsel for respondent no. 1 to 3 that the guidelines issued by it is not challenged by the appellants hence no relief can be granted. However, as discussed earlier, the Regulation,2022 is binding upon the respondent no.1 to 3, it cannot issue any guidelines contrary to it and for that matter contrary to their Regulation,2023. Hence, this submission is rejected. On application of the procedure



prescribed in Regulation,2022, the overall final marks which the appellant would have earned is more than which would have been earned by respondent no. 4 & 5. The appellants stood in waiting list 3 & 4 respectively. However, it is not brought to the notice of this court that candidates stood in waiting list no. 1 & 2 have challenged the admission process or not. Therefore, they cannot derive any benefit of any order which this Court will pass. In view of the above discussion we are of the firm belief that the procedure adapted by the respondent no. 1 to 3 for admission to the Ph.D. programme is contrary to the Regulation,2022. The criteria fixed for allotment of marks in the Regulation,2022 is not followed by the respondent no.1 to 3 in its letter and spirit. The appellants have prayed for quashing the final result of admission for Ph.D. in Biotechnology for “VRET Students (Annexure P/1) and further prayed for reevaluation of the same. It is an admitted fact on record that respondent no. 4 & 5 have admitted in the Ph.D. programme in lieu of the result and they are pursuing the same. The writ petition was filed in the month of July, 2023 and *lis* remained pending for almost one year. This court is conscious of the fact that the respondent no. 3 & 4 are not at fault for the wrong doing of the respondent no.1 to 3. The Hon'ble Supreme Court in case of **National Medical Commission Vs. Mothukuru Sriyah Koumudi and others, (2021) 14 SCC 805** in paragraph 16 and 17 observed as under:-

“16. As the last date for admissions for the present academic year is 30.08.2020, we are not inclined to grant admission to Respondent for this academic year. Even if the admission of Respondent is cancelled as having not been in accordance with the Regulations, it would not be of any use to Respondent or to any other eligible candidate. Furthermore, the High Court is right in holding that Respondent might not have known about the denial of



admission to Respondent illegally. Though we disapprove the practice of Respondent -College in picking up students for granting admission without following the merit list, we do not seek to disturb the admission granted to Respondent.

17. Respondent -College adopted unfair means to deprive Respondent admission to PG course. Respondent has lost one precious academic year for no fault of hers for which she has to be compensated by way of an amount of Rs.10 Lakhs to be paid by Respondent- College within a period of four weeks from today. Furthermore, Respondent is entitled for admission to the MS (General Surgery) course in the next academic year 2021-22 and shall be given admission in a seat allocated to Respondent-College. In other words, one seat in MS (General Surgery) course from the Management Quota of Respondent-College for the next academic year (2021-22) shall be granted to Respondent.

22. In the light of above discussion, we cannot allow the action of respondents 1 to 3 for the procedure adopted for admission for the PhD. Of course respondents 4 and 5 have given admission and they are pursuing their PhD course but at the same time only on this ground, the appellants cannot be deprived of their legitimate right. Justice should not only be done but also seen to have been done.

23. As a result the impugned order dated 24/01/2024 passed by the learned Single Judge in WPC No.3124 of 2023 (*Anjali Tiwari and Anr. Vs. Guru Ghasidas University and ors.*) is hereby set aside. As a fall out, in the interest of justice, we pass the following order-



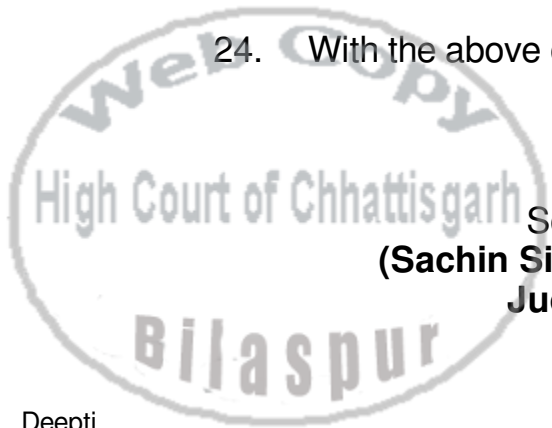
A. We hold that the admission procedure in respect to award / distribution of marks adapted by the respondent no.1 to 3 for admission for Ph.D. programme for the year 2023 is contrary to the University Grants Commission (Minimum Standards and Procedures for Award of Ph.D. Degree) Regulations, 2022.

B. The respondent no.1 to 3 will grant admission to the appellants in Ph.D. programme in the next academic year.

C. The admission of the respondent no. 4 & 5 will not be disturbed and they are allowed to pursue their Ph.D. course.

D. Cost is quantified to Rs.10,000/- to be paid by respondent no.1 to 3 to appellants.

24. With the above direction, the Writ Appeal is allowed.



Sd/-
(Sachin Singh Rajput)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice



WA No. 79 of 2024

Head Note

The regulations of the University Grants Commission is binding upon the University to which it applies. The executive instructions cannot override the statutory rules.

